

# THE ORBIT ACT: AN EXAMINATION OF PROGRESS MADE IN PRIVATIZING THE SATELLITE COMMU- NICATIONS MARKETPLACE

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## HEARING BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS

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# **THE ORBIT ACT: AN EXAMINATION OF PROGRESS MADE IN PRIVATIZING THE SAT- ELLITE COMMUNICATIONS MARKETPLACE**

**THURSDAY, APRIL 14, 2005**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON TELECOMMUNICATIONS  
AND THE INTERNET,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2123 of the Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Stearns, Shimkus, Pickering, Terry, Blackburn, Barton (ex officio), Markey, Inslee, and Dingell (ex officio).

Staff present: Kelly Cole, majority counsel; Will Norwind, policy coordinator; Anh Nguyen, legislative clerk; Peter Filon, minority counsel; Johanna Shelton, minority counsel, and Turney Hall, minority staff assistant.

Mr. UPTON. Good morning. I want to again publicly thank our chairman, Mr. Barton, for the wonderful job he has done the last week and a half, from when we started the markup on the Energy Bill. We finished about 10:45 last night, and it was a great bipartisan effort. And I look forward to having that bill on the House floor next week in the couple days. I know the other committees which had much smaller portions also finished their work yesterday, so we look forward to that.

We are here—for those of you that weren't here last night, it is a little bit of a slower morning, I guess you could say. There are a number of different hearings that are going on. I understand that a number of Democrats are on the way. So that we can make our 2 p.m. planes this afternoon, I thought that we would start pretty close to on time. And I will start with an opening statement, and then we will go down the row. And when we finish, we will go with our panel, and then with questions.

Today's hearing is entitled "The ORBIT Act: An Examination of Progress Made in Privatizing the Satellite Communications Marketplace." Throughout the 1960's and 1970's, the United States, along with 84 other nations, participated in the establishment of a global satellite communications system through the creation of two intergovernmental organizations, INTELSAT and Inmarsat.

Virtually all member nations or signatories were represented primarily by their State-owned and controlled telecommunication com-

panies. And during the 1970's and 1980's, INTELSAT was the only wholesale provider of certain types of global satellite communications services, such as international telephone calls, and the relay of television signals internationally. But in the early 1980's, a number of applicants filed petitions with the FCC to offer competitive international communications services. And as competition with INTELSAT grew, there was considerable criticism from commercial satellite companies because they believe that INTELSAT enjoyed advantages by virtue of its intergovernmental status that diminished marketplace competition.

By the mid-1990's, these competitors began to argue that in order for the satellite marketplace to become fully competitive, INTELSAT would need to be privatized so that all industry participants could participate on a level playing field. And at the same time, the U.S. Government was increasing pressure on INTELSAT and Inmarsat to privatize. And although both had made public announcements that they intended to privatize, Congress took additional steps on a bipartisan basis to ensure that it, in fact, occurred.

In March 2000, Congress passed the ORBIT Act to promote a competitive global satellite communications services market. And the ORBIT Act required both INTELSAT and Inmarsat to be transformed into privately held for-profit corporations with a board of directors that would be independent of former signatories.

Today, we are examining the progress that we have made in privatizing the global satellite communications marketplace, pursuant to the ORBIT Act. From my perspective, it appears as if the ORBIT Act has exceeded expectations. In fact, many view certain segments of the global satellite communications marketplace to be so competitive today, that coupled with additional competitive pressure from submarine fiber capacity, the marketplace is actually unhealthy.

So today, we are going to be examining what marketplace adjustments might be on the horizon, and whether the ORBIT Act needs updating or tweaking in light of that.

I look forward to testimony of today's witnesses, and I thank them for their participation, particularly knowing that we got their testimony in advance, so that after we finish this long markup of the last week and a half, we can go home with a rather thick notebook to look at on the couch, celebrating a great win on the Energy Bill.

And I yield for an opening statement to the distinguished chair and good fellow, Mr. Barton, for an opening statement.

Chairman BARTON. Thank you, Mr. Chairman, and I want to thank you and Mr. Shimkus for your fine work, Mr. Dingell who just arrived. In fact, I might yield my time since we should alternate between the majority and the minority. Since Mr. Dingell is here, if he wishes to give his statement, then I will give mine.

Mr. UPTON. Okay.

Mr. DINGELL. Mr. Chairman, I insist I be permitted to defer to the chairman of the committee.

Mr. UPTON. Okay, that is fair.

Chairman BARTON. I want to thank you, Mr. Upton, for holding this hearing. It has been 5 years since Congress passed the Open

Market Reorganization for the Betterment of International Telecommunications Act, which we call the ORBIT Act. This hearing is designed to take a look at what Congress passed and consider the Act today in light of what has happened since we passed it. It was intended to promote a competitive global satellite communications service market by requiring the two intergovernmental organizations, INTELSAT and Inmarsat, to privatize. Both of those groups were comprised of member nations or signatories that were represented primarily by their State-owned and controlled telecommunications companies. For many years, those were the only satellite providers for international telephone calls, and the international relay of television signals. The ORBIT Act was designed to privatize those organizations, forcing them to compete in the market, and thereby providing consumers with better and more affordable services.

I am pleased to say that the goals of the ORBIT Act have been largely achieved. Today we have a vibrantly competitive market for international satellite services, and government ownership in both companies has diminished significantly. Consumers of those services, as well as the health of the industry are certainly better for it.

So 5 years after passage of ORBIT, we are here today to find out how it is working, whether there is any updating that needs to be made in light of the competitive market today, and how the satellite industry has developed.

I look forward to hearing from our panel of witnesses, and thank them for their participation.

Thank you again, Mr. Upton, for chairing this important hearing. With that, I yield back.

Mr. UPTON. Thank you. Now before I yield to Mr. Dingell for an opening statement, I would just announce that—make unanimous consent that all members opening statements will be made part of the record.

With that, I yield to the distinguished gentleman from the great State of Michigan, Mr. Dingell, for an opening statement.

Mr. DINGELL. Mr. Chairman, thank you, and thank you for holding this hearing today on the ORBIT Act. I want to express my thanks to you and also, to the chairman of the full committee.

This Act became law over 5 years ago. It was intended to primarily manage the privatization of the former international treaty-based organizations, Inmarsat and INTELSAT, so their competitors would have a more level playing field on which to compete. Promoting a fully competitive global satellite communications marketplace was and is a worthy goal.

This marketplace has changed a lot over the past 5 years. Inmarsat, INTELSAT, and the New Skies are no longer controlled by signatories designated by member nations. In fact, these companies are almost wholly owned by private equity groups. Early in 2001, the Federal Communications Commission certified that New Skies had completed all of the Act's original privatization requirements. Both Inmarsat and INTELSAT recently petitioned the FCC to certify that they, too, are in compliance with the privatization provisions of the Act, as amended last year. The amended Act allows the companies to be certified as compliant with the Act, if,

among other things, the FCC determines that the companies have achieved substantial delusion of the aggregate amount of signatory financial interest in such entities. This requirement was added to the Act last year as an alternative to the original initial public offering requirement, which, by the way, has created certain difficulties.

The Government Accountability Office issued in 2004 a report on the privatization of INTELSAT and how the Act has been implemented. According to the GAO, most stakeholders and experts the GAO spoke with believe that access to the non-U.S. satellite markets has improved. It is interesting to note that few attributed this improvement to the ORBIT Act. These stakeholders credited certain international telecommunications agreements, and a global trend toward privatization of telecommunications companies as having improved access to non-U.S. markets. In fact, several of the persons interviewed by the GAO said that the Act merely complimented ongoing trends toward more open satellite markets.

The Act has been amended several times in recent years without a hearing by this subcommittee. Given these amendments to the Act and the privatization of Inmarsat, INTELSAT, and New Skies, today's hearing is appropriate and overdue. And for that reason, I want to express my particular commendations to you, Mr. Chairman, for holding this hearing. I look forward to the witnesses' opinions on how the Act has been working, as well as any modifications that may be necessary, given the changes in the marketplace.

I thank you, Mr. Chairman.

Mr. UPTON. I recognize Mr. Shimkus for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman. I will be brief.

We have got—everybody has laid out why we are here. What I always talk about it this was really my—the ORBIT Act was really my first kind of contentious piece of legislation that pitted a whole bunch of different folks. And I talked to schools quite a bit, and in my discussions with them, I talk about—they usually ask me “Why do you vote the way you vote?” And I say, you make campaign promises, hopefully, you keep them. You have ideology, you have got core values, I said. But then there are some issues that, you know, you just have to learn and try to figure out and sort out. And I said, for example, satellite competition. I mean, it rings no bells to my constituency. No one even understands what it is about, but then I go through the history of how a former chairman was on one side, a subcommittee chairman was on the other side, it was a big blowup, a big fight. It broke allies and friends in the committee. A lot of you are smiling, you remember it. It was not an easy passage. And now—and so I talk about this a lot in southern Illinois.

So it is good now for me to have a re-look. We just finished the Energy Bill, and during a couple of the debates, we would be cautioned. I hope this doesn't come back to bite us, this amendment or that amendment. I hope years from now, we don't live to regret it. I think that is the importance of this hearing, to see how we are doing. And so I can continue the story back to my district about satellite competition, I appreciate—it shows you how old I am, how long I have been here.

Mr. Chairman, I thank you for the hearing. I yield back.



Mr. UPTON. I recognize the distinguished ranking member of the subcommittee from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much, and I want to commend you for calling this hearing this morning on the Open Market Reorganization for the Betterment of International Telecommunications Act.

Legislation that was approved by Congress 5 years ago, this hearing will give us an opportunity to gage the Act's success in achieving several policy goals, and to also test the rule of Renee Ensomo of whether or not truth and technology triumphs over baloney and bureaucracy. And so that will be the subject of today's hearing.

The ORBIT Act was designed to close a chapter in commercial satellite communications, which was begun in 1962 with the passage of the Communications Satellite Act. That legislation spurred the development of two intergovernmental organizations, namely INTELSAT and Inmarsat, to which dozens of nations and national signatories joined in a collective effort to provide international satellite communications. During the 1960's and 1970's, that model worked well because it was iridominated by relatively little technological change in telecommunications and largely domestic monopolies across the globe for our telecommunications services, such as MA Bell here in the Unites States. However, in many other countries, the equivalent of MA Bell was actually owned by the government, and these government-owned or controlled telephone companies were the owner/shareholders of the international satellite organizations, with an incentive to favor such organizations in their domestic markets, to the detriment of private sector alternatives.

I offered the first bill to address INTELSAT's anti-competitive behavior and rid it of its government bestowed privileges and immunities in 1983. Domestically at that time, the United States was breaking up MA Bell, fostering the deployment of a cable television infrastructure, and the personal computer revolution was underway. Despite the changes in technology and international markets, the two intergovernmental organizations remained bureaucratic and complacent at best, and anti-competitive and anti-innovative at worst.

In 1988, PanAmSat launched a satellite that ushered in the era of competition. Renee Ensomo, a graduate of Medford High School, in my district, told me that if I supported his vision, it could transform the way in which the world was organized around satellite technology. Renee, as usual, was correct. Yes, it took a dozen years before Congress updated the 1962 era statute with the ORBIT Act to reflect the changed technological and competitive circumstances, and used the leverage of the U.S. market access to finally force INTELSAT and Inmarsat to shed their intergovernmental status and fully privatize.

The ORBIT Act contained many provisions, including provisions ensuring direct access to INTELSAT——

Chairman BARTON. Would the gentleman yield?

Mr. MARKEY. I would be glad to yield.

Chairman BARTON. Are you auditioning for Saturday Night Live? The news that was or whatever?

Mr. MARKEY. I am still groggy from last night, Mr. Chairman. I don't even know—we were here last night debating energy until I don't know what time, so—

Chairman BARTON. You had to do it in two committees yesterday, actually. You were doing double duty. You were in Resources and Energy.

Mr. MARKEY. I was losing in two committees yesterday, simultaneously. It was an incredible challenge to my self esteem, and I am using this as a little anecdote. Notice how I am praising myself for the last 20 years of incredible insight that I have. This is just a little known reason.

What was that guy's name on Saturday Night Live that when he looked in the mirror? You know what I am talking about?

Chairman BARTON. Sarducci?

Mr. MARKEY. No. Jack Handy. You know Jack Handy?

Chairman BARTON. Mr. Markey is a little bit humble. He got more in the bill and still voted no than most of us that supported the bill.

Mr. MARKEY. I am proud of my humility, thank you. I think it is my best tribute, my best quality.

Where was I here?

The ORBIT Act contained many provisions, including provisions ensuring direct access to INTELSAT for competitors, rather than forcing American companies to buy through the government chartered go-between, COMSAT. It permitted—it prohibited the FCC from auctioning licenses for satellite frequencies. It stripped the intergovernmental entities of their privileges and immunities in the marketplace, and it induced, but did not require, INTELSAT and Inmarsat to conduct initial public offerings by withholding the opportunity to serve U.S. customers for non-core advance services.

This last provision was updated last autumn to allow these entities to privatize through the sale to private equity firms, rather than conduct an IPO. In addition, there were two companies created by spinning off assets from INTELSAT and Inmarsat, and these two companies had several additional conditions.

Specifically, the two companies were prohibited from having interlocking directorates and common employees, and both were also prohibited from re-affiliating with their former parents. In the case of ICO, for 15 years after the date upon which Inmarsat was fully privatized, and for New Skies, the Act stipulated that 11 years had to pass after INTELSAT's full privatization before it could re-affiliate with its former parent.

Today's hearing gives us an ability to explore this wide range of issues, and I want to thank the witnesses, and you, Mr. Chairman, for conducting this very important hearing.

Mr. UPTON. I recognize the gentlelady from Tennessee, Ms. Blackburn.

Ms. BLACKBURN. Thank you, Mr. Chairman.

I simply want to welcome our guests. Our ranking member over there likes to talk about the past to get his information on satellite communications. I talk to my 24 and my 27-year-old, who are totally intrigued with what you do and enjoy spending a bit of their working life in telecommunications. We welcome you and we look forward to your perspective.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

It is, you know, important to hold this hearing on the progress that has been made so far on privatizing the satellite communications marketplace, especially in regard to INTELSAT and Inmarsat.

I was here when we did this. INTELSAT was previously an internationally owned organization controlled by a 147-member government, sort of like a U.N. It is possible that such a worldwide government sponsored leviathan may have been necessary in the 1960's and 1970's; however, changing times and technology, and the increasing ability of private satellite companies to enter and compete in the marketplace, led, of course, to the privatization of 2001.

Inmarsat, another intergovernmental organization, also privatized in similar fashion around the same time. Now, this is a good thing, and I think all of us on the telecommunications supported it. The privatization of INTELSAT and Inmarsat will level the playing field in the satellite communication marketplace, and will help make them more responsive, and I believe, effective providers.

Over the past year or so, we have seen several acquisitions of SATCOM, operators worth billions of dollars buy private equity firms. Hopefully, these acquisitions will promote innovations and competition, and ultimately benefit the consumers. I would also imagine that many of the technologies developed and promoted by these SATCOM's will have applications to our military and other defense-related areas.

We try to do our part with the ORBIT Act, and the FCC is working with us to provide annual updates on the progress of this privatization in this area. So I look forward to Mr. Abelson's testimony to learn more about what the FCC is doing with regard to this. I also understand that the satellite landscape has changed remarkably since we passed the ORBIT Act. That is why I am interested in hearing from the witnesses who represent these SATCOM providers to learn how market access has improved, and to hear what we may need to do in this subcommittee to remove any remaining challenges.

So again, Mr. Chairman, I think it is very important to hold this hearing. I look forward to hearing the witnesses. If I am not here, I shall be in my office watching on the screen.

And I yield back.

Mr. UPTON. Better be taking notes as well.

Mr. Terry for an opening statement.

Mr. TERRY. Waive.

Mr. UPTON. Okay. That concludes our opening statements. Again, good morning. Your testimony will be made part of the record in its entirety. We would like you to take no more than 5 minutes. You have got a little clock there which will tell you how much time is left to summarize your statement. At which point, when you are done, we will be taking questions from the members on the panel.

We are joined today by Mr. Donald Abelson, chief of the International Bureau from the Federal Communications Commission;

Mr. Daniel Goldberg, CEO of New Skies Satellite, came all the way from the Netherlands. I chided him yesterday that if the hearing was going to be postponed, that he should thank the Lord for frequent flyer miles, because the hearing would not take place today. Mr. Phil Spector, Executive VP and General Counsel of INTELSAT Global Service Organization; Mr. Alan Auckenthaler, Vice President of Inmarsat Ventures Limited, from Virginia; and Ms. JayEtta Hecker, Director of Fiscal Infrastructure, Office of Congressional Relations, from the Government Accountability Office, the GAO.

Welcome all of you. Mr. Abelson, we will start with you.

**STATEMENTS OF DONALD ABELSON, CHIEF, INTERNATIONAL BUREAU, FEDERAL COMMUNICATIONS COMMISSION; DANIEL S. GOLDBERG, CHIEF EXECUTIVE OFFICER, NEW SKIES SATELLITE B.V.; PHILLIP L. SPECTOR, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, INTELSAT GLOBAL SERVICE CORPORATION; ALAN AUCKENTHALER, VICE PRESIDENT, INMARSAT VENTURES LIMITED; AND JAYETTA Z. HECKER, DIRECTOR, PHYSICAL INFRASTRUCTURES TEAM, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. ABELSON. Good morning, Mr. Chairman, Mr. Markey, and distinguished members of the committee. As the chairman has said, I am Don Abelson. I am Chief of the International Bureau at the Federal Communications Commission, and it is my pleasure to come before you today to discuss the ORBIT Act.

The FCC is actively engaged in implementing the requirements of the ORBIT Act as set forth by Congress. As required by the statute, the Commission has reported to Congress annually on the FCC's implementation. The Commission intends to submit our next report by the due date of June 15.

Since January 2000, the Commission has undertaken a number of actions to ensure that INTELSAT, Inmarsat, and New Skies, the separated entity of INTELSAT, have been privatized in a manner—in a pro-competitive manner consistent with the criteria of the statute. Let me provide you with highlights of these actions.

For INTELSAT, in 2001, the Commission determined that INTELSAT had privatized in a manner consistent with the criteria of the Act, except for the requirement that INTELSAT conduct an initial public offering, or IPO. The Commission granted licenses for INTELSAT satellites, conditioned on INTELSAT's completion of an IPO within the timeframe stipulated by the Act. The original deadline for INTELSAT to complete an IPO was October 1, 2001. The deadline has been extended several times by Congress and the Commission. The most recent extension authorized by Congress provides that INTELSAT must conduct its IPO by June 30, 2005, unless the Commission extends the deadline to no later than December 31.

In October 2004, the Commission passed—the Congress passed an amendment to the ORBIT Act that established a certification process as an alternative to conducting an IPO. The certification process has three requirements. First, that INTELSAT achieves substantial dilution of the aggregate amount of former signatory financial interest. Second, that no former signatory possess effective

control; and third, that no intergovernmental organization hold any ownership interest.

In 2004, the Commission approved the transfer of INTELSAT to Zeus Holdings, which is wholly owned by 20 investment funds that are ultimately controlled by four private equity fund groups. Immediately thereafter, INTELSAT filed their certification, and requested that the Commission determine that it had met the Act's modified privatization requirements. This week, the Commission adopted an order regarding this matter, and expects to release it shortly.

With respect to Inmarsat, the Commission has taken the following actions.

In 2001, the Commission concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the ORBIT Act, and authorized the provision of Inmarsat mobile services in the United States. The authorization is subject to Inmarsat complying with its requirements to conduct an IPO under the terms of the ORBIT Act. As in the case of INTELSAT, the IPO deadline for Inmarsat was established by statute and extended several times by the Congress and the Commission. The current deadline for Inmarsat to conduct an IPO is June 30, 2005.

The October 2004 amendment to the ORBIT Act also applies to Inmarsat, and permits Inmarsat to provide a certification to the FCC as an alternative to conducting an IPO. The requirements under the certification procedures for Inmarsat are the same as those I listed for INTELSAT, except that minimal intergovernmental organization ownership is permitted.

In 2004, Inmarsat filed a certification with the FCC that it had fulfilled the modified requirements of the ORBIT Act. The Commission placed Inmarsat's filing on public notice in December 2004, and this matter is currently pending before the Commission.

And last, for New Skies, in 1999, prior to the enactment of the Act, the Commission granted Earth station operators authorizations to operate with the New Skies system. The grant was also conditioned on New Skies taking certain actions to become independent of INTELSAT, including conducting an IPO.

In 2001, the Commission found that New Skies had met the criteria of the ORBIT Act, including substantially diluting the ownership of former INTELSAT signatories through an IPO. New Skies announced a share buy back program in 2002, under which it would repurchase up to 10 percent of the then outstanding shares. And in 2003, the Commission found that New Skies share repurchase program had the effect of further diluting the interest of former INTELSAT signatories.

And last, in 2004, the Commission approved the transfer of New Skies to five private equity funds affiliated with Blackstone, a global investment firm.

In conclusion, 5 years after enactment, significant progress has been made and is being made to achieve the privatization goals that the Congress set forth in the Act. New Skies and INTELSAT are now privately held companies, and Inmarsat is more than 50 percent privately held. And furthermore, the Commission continues to implement the provisions of the Act to ensure that the broad

goal of a competitive global satellite communication market is ultimately achieved.

Thank you again for the opportunity to appear today, and I would be happy to respond to your questions.

[The prepared statement of Donald Abelson follows:]

PREPARED STATEMENT OF DONALD ABELSON, CHIEF, INTERNATIONAL BUREAU,  
FEDERAL COMMUNICATIONS COMMISSION

Good morning, Chairman Upton, Mr. Markey, and distinguished members of the Subcommittee. I am Donald Abelson, Chief of the International Bureau of the Federal Communications Commission (FCC) and it is my pleasure to come before you today to discuss the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act.

The FCC is actively engaged in implementing the requirements of the ORBIT Act as set forth by Congress. The purpose of the Act is “to promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”

As required by the statute, the Commission has reported to Congress on annual basis regarding its actions to implement the ORBIT Act. We intend to submit our next report to Congress on or before the due date of June 15, 2005.

Since January 2000, the Commission has undertaken a number of actions to ensure that the former intergovernmental satellite organizations, INTELSAT and Inmarsat, and the separated entity of INTELSAT, New Skies, have been privatized in a pro-competitive manner, consistent with the criteria of the statute. The Commission took the following actions since enactment of the ORBIT Act in 2000:

*INTELSAT*

- In August 2000, the Commission granted conditional licenses to Intelsat—a separate, privately held U.S. corporation created by INTELSAT<sup>1</sup>—to hold U.S. satellite authorizations and associated space segment assets in anticipation of INTELSAT’s full privatization. The FCC authorizations applied to INTELSAT’s existing satellites, planned satellites, and planned system modifications associated with INTELSAT’s frequency assignments in the fixed satellite services (“FSS”) C- and Ku- bands existing as of privatization. They were conditioned upon Intelsat privatizing in a manner consistent with the ORBIT Act.

- Intelsat privatized in 2001. The Commission determined that Intelsat had privatized in a manner consistent with the privatization criteria of the ORBIT Act, except for the requirement that Intelsat conduct an Initial Public Offering (IPO). The Commission conditioned its findings on Intelsat conducting an IPO within the timeframe stipulated by the ORBIT Act.

- The ORBIT Act requirement for an IPO was intended to achieve the independence of the newly privatized company by substantially diluting ownership by former INTELSAT Signatories.<sup>2</sup> The ORBIT Act initially required an IPO by October 1, 2001, but gave the Commission discretion to extend this deadline to no later than December 31, 2002. Since that time, Congress has amended the ORBIT Act a number of times to extend these deadlines. The Commission, under the authority of Congress, has also extended this deadline. Currently, the deadline is June 30, 2005.

- In 2004, Congress also enacted legislation amending the ORBIT Act by adding Section 621(5)(F) allowing for a certification process as an alternative to conducting an IPO and public securities listing.<sup>3</sup> This process permits Intelsat (and Inmarsat) to certify, and the Commission to determine, that certain financial and control interests held by Signatories and former Signatories of pre-privatized INTELSAT, and certain ownership interests held by intergovernmental organizations, no longer exist in Intelsat.

- In December 2004, an Order was issued granting applications filed by Intelsat, and Zeus Holdings Limited, a private equity fund, to transfer control of certain Commission authorizations from Intelsat to Zeus. The Commission concluded, pursuant to sections 214(a) and 310(d) of the Communications Act, that approval of the applications will serve the public interest, convenience, and necessity.

<sup>1</sup> For the purposes of this testimony, the term “INTELSAT” refers to the original intergovernmental organization prior to privatization. The term “Intelsat” refers to the Intelsat Ltd. and its subsidiaries created upon privatization in 2001.

<sup>2</sup> Pub.L. 106-180, 114 Stat. 48 § 621(2).

<sup>3</sup> Pub.L. 108-371.

- In December 2004, Intelsat filed a Petition for Declaratory Ruling and Certification (updated February 9, 2005) requesting that the Commission find Intelsat to be in compliance with the certification requirements as provided under Section 621(5)(F) of the ORBIT Act. The Commission has adopted an order regarding this matter and expects to release it shortly.

#### *Inmarsat*

- Since 1978, Inmarsat has provided maritime services to and from the United States. Inmarsat privatized in 1999, prior to enactment of the ORBIT Act. In 2001, the Commission concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the ORBIT Act and authorized the provision of mobile services in the United States, subject to Inmarsat complying with its requirement to conduct an IPO under the terms of the ORBIT Act. The Commission granted several operators in the United States authority to use Inmarsat for communications services to, from, or within the United States.
- In February 2004, Inmarsat filed a letter informing the Commission of a series of transactions, which it described as constituting an IPO pursuant to Inmarsat's remaining ORBIT Act requirements. In response to this letter, the Commission released a Public Notice and also extended the deadline for Inmarsat to conduct an IPO to December 31, 2004.
- Congress has amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO. Most recently, in October 2004, Congress amended Clause (ii) of Section 621(5)(A) of the ORBIT Act to extend Inmarsat's IPO deadline to June 30, 2005.<sup>4</sup>
- On November 15, 2004, Inmarsat filed a certification with the Commission that it has fulfilled the amended privatization requirements of the ORBIT Act. Inmarsat also petitioned the Commission to determine that its certification complied with the remaining privatization criteria of the statute. The Commission placed Inmarsat's Request for Declaratory Ruling on Public Notice on December 21, 2004. This matter is currently pending before the Commission.

#### *New Skies*

- New Skies is the Netherlands-based private company INTELSAT created in 1998 as INTELSAT's first step toward privatization. In 1999, prior to the enactment of the ORBIT Act, the Commission granted U.S. earth station operators limited three-year authorizations to operate with New Skies in the U.S. market. This grant was conditioned on New Skies' taking certain actions to become independent of INTELSAT, including conducting an IPO as anticipated by the INTELSAT Assembly of Parties decision approving New Skies' creation. New Skies conducted its IPO in October 2000. In 2001, the Commission granted New Skies' request to provide satellite services to, from and within the United States. The Commission found that New Skies had met the criteria of the ORBIT Act, including substantially diluting the ownership of former INTELSAT Signatories through the IPO.
- In 2001, New Skies petitioned for, and the Commission granted under delegated authority, the addition of four satellites operated by New Skies to the "Permitted Space Station List" with conditions to remove secondary status requirements for certain New Skies' satellites.
- In 2002, New Skies announced a share buy-back program under which it would repurchase up to 10 percent of its then outstanding shares. In 2002, PanAmSat filed an "Emergency Request for Inquiry into the Continuing Qualifications of New Skies to Access the U.S. Market." In 2003, an Order was issued denying PanAmSat's request, based on a finding that the New Skies share repurchase program had the effect of further diluting the combined interest of the former INTELSAT Signatories in New Skies. Through the buy-back program, New Skies purchased a higher percentage of shares held by former Signatories than of shares held by the general public.

#### *Other Actions*

- The ORBIT Act requires that users and service providers be permitted to obtain a form of direct access to INTELSAT capacity and directed the Commission to conduct a rulemaking to determine if users or providers of telecommunications services have sufficient access to INTELSAT space segment directly from INTELSAT to meet their service capacity requirements. Prior to the adoption of the ORBIT Act, the Commission had decided in a rulemaking proceeding that direct access is in the public interest allowing customers in the United States to acquire satellite capacity

<sup>4</sup>Pub.L. 108-371.

directly from INTELSAT rather than from the U.S. signatory, Comsat Corporation (Comsat).

- In 2000, the Commission initiated a rulemaking and released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions. In 2001, Comsat filed a report, as required by the Commission, detailing the results of negotiations and maintaining direct access opportunities were increasing at that time. In November 2001, following INTELSAT's privatization and Intelsat's purchase of Comsat, the Commission concluded that the underlying basis for the direct access provisions of its rulemaking no longer existed, and terminated the proceeding.

- Finally, the Commission has authorized several other acquisitions involving entities subject to the ORBIT Act, including: (1) the acquisition of Comsat by Lockheed Martin in 2000;<sup>5</sup> (2) the acquisition of Comsat's former mobile services business from Lockheed Martin by Telenor in 2001; (3) the acquisition of Comsat's former world systems business from Lockheed Martin by Intelsat in 2002; (4) the acquisition of Comsat General from Lockheed Martin by Intelsat in 2004; and (5) the acquisition of New Skies by Blackstone Funds in 2004.

In conclusion, the Commission will continue to implement and enforce the requirements of the ORBIT Act as directed to by Congress. Furthermore, the Commission will continue to inform Congress of the actions it takes to implement the requirements of the statute in its next annual report.

Thank you again for the opportunity to appear before you today. I will be happy to respond to your questions.

Mr. UPTON. Thank you. Mr. Goldberg, welcome.

#### STATEMENT OF DANIEL S. GOLDBERG

Mr. GOLDBERG. Thank you very much, Mr. Chairman, Mr. Markey, and members of the subcommittee. Thank you for inviting me today, and in particular, for holding this hearing, particularly having worked through the night. We are very appreciative to be able to participate in this.

My name is Dan Goldberg, and I am the CEO of New Skies Satellites, a global satellite communications company. New Skies was created in 1998 when we were spun out of INTELSAT, and we have been subject to ORBIT since its enactment.

It is our belief that ORBIT has achieved precisely what Congress intended, a more competitive satellite services market through the privatization of the IGO's. For this, Congress should be justifiably proud, having succeeded in fully privatizing the IGO's. And in light of the dramatic changes experienced in our market, we believe it is now appropriate for Congress to make certain minor changes to ORBIT. These changes are necessary to bring ORBIT in line with current market realities, and to ensure that our strategic industry is competitive, robust, and healthy.

Put simply, the international satellite services market is unrecognizable today from the one Congress confronted when it began considering these issues. From the creation of our industry to the late 1980's, INTELSAT, which was then an IGO, dominated the market. Although private entities in the late 1980's increasingly competed with INTELSAT, Congress recognized by enacting ORBIT that privatizing the IGO's would facilitate opening overseas markets, thereby stimulating additional competition. In order to satisfy ORBIT's requirements, New Skies conducted an IPO in Oc-

<sup>5</sup>The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations.



tober 2000, diluting our original owners by roughly 30 percent. The FCC, as Don has just said, concluded that this satisfied ORBIT's substantial dilution requirement and granted us long-term access to the U.S. market.

Since that time, New Skies, INTELSAT, and Inmarsat have each been acquired by private equity investors. In short, the three companies that were the subject of ORBIT are now purely commercial entities, subject to the exacting demands of private equity investors. Indeed, New Skies and INTELSAT have no government ownership whatsoever, going far beyond the substantial dilution that ORBIT required. But the fundamental change in the ownership structures of New Skies, INTELSAT, and Inmarsat, not to mention every other major satellite operator, isn't the only dramatic change in the industry since ORBIT's passage. Today, as a result of substantial overinvestment in satellites and undersea fiber capacity, as well as improvements in transmission technology, the industry today is struggling with excess capacity, falling prices, and satellite utilization rates of historic lows. Notwithstanding a 60 percent increase in supply since the House first passed legislation to privatize the IGO's, industry revenues have actually declined. Most operators have responded to this situation by reducing spending, cutting jobs, and virtually freezing investment in expansion satellites.

The difficult state of the market represents a real risk to national security interests, and the public interests more broadly. Congress has formerly identified commercial satellites as critical infrastructure. They are of strategic importance to the Department of Defense, and other U.S. Government agencies. It is vitally important that the industry's players, including U.S. satellite manufacturers who rely on the commercial satellite sector, are financially sound. That said, the present unhealthy condition of the market isn't necessarily cause for great alarm. The global operators remain financially stable, and our fleets operationally robust, albeit underutilized. Indeed, the market today is near the bottom of the natural boom and bust cycle that is common throughout many industrial sectors. And just as in other sectors, natural market forces, over time, should put our sector on a sunder footing.

But unlike the recent activity in the terrestrial wireless sector, a subject well-known to this committee, a full and necessary rationalization of our sector has yet to occur. Although some consolidation has taken place, most industry observers expect more.

As the smallest of the global operators, one of our objectives is to pursue a strategic combination or joint venture with another operator. INTELSAT is one of a number of entities with whom it would be logical for us to consider such a transaction. However, in light of ORBIT's restrictions, we would be uniquely constrained from entering into that kind of arrangement, thereby limiting our strategic alternatives and placing us at an unfair competitive disadvantage.

In conclusion, having achieved everything ORBIT was designed to achieve, and in light of the dramatic changes in our sector, there is no longer any policy justification for keeping New Skies bound by detailed rules that apply to no other competitive company. Any future satellite industry consolidation should be market-driven,

constrained, of course, by the need for FCC and antitrust approvals. Indeed, Congress has provided many alternate safeguards to ensure a competitive market, including the FCC's public interest test, the antitrust laws, and other mechanisms ensuring the highest level of scrutiny for any transaction that implicates national security. We believe it is now appropriate for you to make certain minor changes to ORBIT to address the current realities in our industry.

Thank you for consideration, and I will be pleased to answer any questions you may have.

[The prepared statement of Daniel S. Goldberg follows:]

PREPARED STATEMENT OF DANIEL S. GOLDBERG, CHIEF EXECUTIVE OFFICER, NEW SKIES SATELLITES B.V.

Mr. Chairman and Members of the Subcommittee: My name is Dan Goldberg, and I am the Chief Executive Officer of New Skies Satellites B.V. New Skies is a global satellite communications company that provides satellite-based transponder capacity for the transmission of data, video, voice, and Internet-related services. We own and operate a network of five in-orbit satellites positioned in fixed orbital locations above the earth, including two that we have designed, constructed, launched, and placed in operation since our creation in 1998. We have one additional satellite currently under construction by Boeing Satellite Systems.

I appreciate the opportunity to appear before the Subcommittee today to review the impact that the ORBIT Act has had on our company and on the international satellite services sector more broadly since its enactment in March 2000. The central message I have for you is that the international satellite services market is unrecognizable today from the one Congress confronted when it began considering satellite competition issues in the late 1990s. The ORBIT Act was designed to promote competition in this market by eliminating government ownership and control of operators providing international satellite services. Today, Intelsat, Inmarsat, and New Skies—the three companies that were the focus of the law—are 100 percent controlled by private commercial interests. Indeed, the market today is not only competitive, it is hypercompetitive to the point where the sector, on balance, is unhealthy. That situation has adverse implications for U.S. national security interests as well as for the public more broadly.

Although ORBIT was a tremendous success in achieving its twin goals of promoting privatization and competition, it is now important that Congress reexamine the law in light of the enormous changes in the industry and competitive environment that have occurred since it was enacted. For this reason, we urge the introduction and passage of legislation to update ORBIT to address the current realities.

#### *New Skies' Creation and Roots*

Let me begin by briefly tracing the history of New Skies' efforts to establish itself in the satellite marketplace, and to compete with satellite operators many times our size. New Skies was created on April 23, 1998 as a privatized commercial spin-off from INTELSAT, which at that time was still an intergovernmental organization. INTELSAT formed the new company under the laws of The Netherlands, and transferred to it certain assets and liabilities, including several satellites and related contracts. The members of INTELSAT—primarily governments, their telecommunications ministries, or their national satellite or telecommunications providers—were given ownership stakes in New Skies approximately equal to their respective ownership stakes in INTELSAT.

What INTELSAT did not transfer, however, were any employees or terrestrial infrastructure required to control and manage the payloads of the satellites. In that sense, New Skies was literally created from scratch. A new management team was brought in, composed almost entirely of Americans with experience in the satellite or telecommunications fields. I myself started as New Skies' first general counsel. All of us were required to move our families to The Netherlands, where INTELSAT had formed the company.

We opened a headquarters office in The Hague, and have since established a sales and marketing office in Washington, D.C. and a teleport facility near Manassas, Virginia, as well as offices and other ground-based facilities in nine other locations around the globe. Although we are Dutch as a matter of corporate law, all of our senior officers are Americans, all of our satellites have been built by American manufacturers, our largest customers are American and, as I'll say more about later, we

are at this time 100 percent owned by affiliates of the U.S. private equity firm The Blackstone Group.

*The ORBIT Act and Privatization*

From the creation of the fixed satellite services (or FSS) industry in the 1960s until the late 1980s, INTELSAT—which was then an intergovernmental treaty-based organization—held a near monopoly over international satellite communications. Since the late 1980s, however, the FSS industry has evolved into a highly competitive, global industry. Due in large part to pressure from the Congress and other governments, as well as from newer commercial entrants seeking to promote competition in the international satellite services market, INTELSAT began a privatization process in the late 1990s.

The 1998 creation of New Skies described above was only the first step in that process. Although from our inception New Skies has operated as a fully privatized, independent commercial entity, Congress believed more needed to be done to ensure not only nominal privatization of the industry but also a competitive marketplace for international satellite services. Accordingly, in March 2000, Congress enacted the Open-Market Reorganization for the Betterment of International Telecommunications Act, or the ORBIT Act. The Act leveraged access to the most important telecommunications market in the world—the United States—as an incentive for INTELSAT and Inmarsat, another intergovernmental treaty-based organization, to achieve full and pro-competitive privatizations.

Although New Skies at that point had already operated for two years as an independent private entity, ORBIT also imposed a series of requirements and restrictions on us. These were intended to ensure, on one hand, that INTELSAT, the intergovernmental organization that created us and had not yet privatized, would not have undue influence over our operations; and on the other hand, that New Skies would not be accorded preferential treatment or benefits from its INTELSAT heritage. (A summary of these statutory provisions is appended to my testimony.)

Among the most significant of ORBIT's provisions was a requirement that INTELSAT, Inmarsat, and New Skies each conduct an initial public offering of shares by various dates specified in the statute in order to substantially dilute the aggregate ownership of our stock by signatories or former signatories of INTELSAT. New Skies' deadline for conducting its IPO under the original statute was July 31, 2001, and we beat that deadline by more than nine months. From October 2000 until November 2004, we were a publicly held company whose shares traded on the New York Stock Exchange (via American Depositary Shares) and on the Euronext Amsterdam exchange.

To this very day, in fact, New Skies remains the only company covered by ORBIT that actually did all that Congress originally required of it, and within the time frame initially established by the law. We sought a single statutorily permitted extension from the Federal Communications Commission when, in the spring of 2000, the Internet bubble burst and sent market conditions spiraling downward the day before we were to launch our IPO. Even though our balance sheet and cash flow were strong and, therefore, we did not need to conduct an IPO to raise capital, we never came back to Congress seeking any further statutory extensions. Indeed, we proceeded with the required IPO in the fall of 2000, even in the midst of a bear market. That is how importantly we viewed the need to demonstrate compliance with the wishes of Congress. Having completed our IPO, we then sought from the FCC full and unrestricted access to the U.S. market, which we were granted in 2001.

Last year, in order to enhance shareholder value and help grow and develop our company through the financial backing and strong commercial focus of a private equity firm, New Skies agreed to be acquired by affiliates of The Blackstone Group, a transaction that was overwhelmingly approved by our shareholders in July 2004 and concluded in November 2004. As discussed below, private equity firms now also own most of our competitors. We are now in the process of planning for a new IPO, which, if successful, will result in a substantial percentage of our shares being traded on the New York Stock Exchange.

In the meantime, both INTELSAT and Inmarsat have also fully privatized through sales of their respective companies to private equity investors. Those transactions were facilitated by an amendment to ORBIT approved last fall, which in turn followed several amendments during the last four years in which Congress repeatedly extended the statutory deadlines for conducting IPOs. Through last year's amendment, Congress essentially acknowledged that IPOs were not the only way in which private ownership and substantial dilution of signatory influence could be accomplished.

*The Satellite Sector, Then and Now*

There can be no doubt that ORBIT successfully accomplished the goals that Congress set more than five years ago. It is no exaggeration, Mr. Chairman, to say that the international satellite services market today is virtually unrecognizable when compared to what Congress confronted in the mid- to late 1990s when it last debated the future of the industry.

The three international satellite operators that were the focus of ORBIT—INTELSAT, Inmarsat and New Skies—are now purely commercial concerns controlled by private equity investors. As such INTELSAT and Inmarsat are now fully privatized and no longer enjoy any of the privileges and immunities once accorded to them by virtue of their former status as intergovernmental organizations. Nor are the companies covered by ORBIT the only satellite operators to be acquired by private equity investors. In addition to New Skies, Intelsat and Inmarsat, both PanAmSat and Eutelsat are now controlled by private equity consortia.

Independent firms that once complained the deck was stacked against them by U.S. law and treaty obligations now compete aggressively in a market untainted by IGOs that once enjoyed special legal and diplomatic protections. New Skies is one of four global FSS satellite operators—the others are the privatized Intelsat, SES Global, and PanAmSat—and we compete with them as well as with numerous other regional and national satellite operators like Eutelsat and SatMex, and with suppliers of certain ground-based communications services. Inmarsat, although a global satellite operator, participates in the mobile satellite services sector, which is a different market than the FSS sector.

Unlike the global satellite operators, a number of regional operators today are owned in whole or in part by governmental entities. Some of these operators benefit from preferential treatment in their home markets, treatment that distorts competition in those markets. ORBIT, however, does not apply to these regional operators and, therefore, the markets in which they operate must be opened through bilateral or multilateral trade efforts.

Privatization and private equity participation in the international satellite services market are not the only ways in which our industry has changed radically. In five short years, the FSS industry has evolved into what is widely regarded an intensely competitive—I would argue, in fact, hypercompetitive—industry. The numbers tell the story dramatically.

From 1998, when the House of Representatives first passed its version of what eventually became the ORBIT Act, to the end of 2004, the amount of satellite supply has swelled by nearly 60 percent, growing from 5,285 transponders in orbit to 8,299. And this number is expected to increase still further by the end of 2006. In fact this dramatic increase substantially understates the *actual* expansion of supply, as digital compression and other improvements in transmission technology have resulted in at least a doubling of effective transponder capacity, and this is likely a conservative estimate.

In addition to this enormous expansion in satellite supply, the FCC estimates in its 2004 International Circuit Status Report that there was more than 40 times as much submarine fiber capacity available in 2003 than in 1998. This fiber capacity is competitive with international satellite capacity for a variety of applications. Indeed the FCC estimates in this same report that whereas satellites carried 10 percent of international traffic in 1997, that amount was cut to just 1 percent in 2003.

This significant expansion of satellite capacity and competitive undersea fiber has left the industry struggling with substantial excess supply, falling prices, and satellite utilization rates at historic lows. Our experience is a good proxy for what's taking place in the international satellite services market more broadly. Our average annual rate for a transponder sold in 2000, the year ORBIT was enacted, was \$1.9 million; in 2004, the rate was \$1.2 million, a nearly 40 percent decrease. Notwithstanding the fact that the industry has substantially increased capacity since the time ORBIT was passed—investing billions of dollars to do so—industry revenues have actually *declined* in this period, from \$6.8 billion in 2000 to an estimated \$6.75 billion in 2004. And where the industry-wide satellite utilization rate was 82 percent at the time of ORBIT's passage, it is now closer to 65 percent, leaving close to 3,000 transponders in orbit empty. This is slightly more than half of the total satellite capacity that existed when this Committee first considered legislating in this area. Many operators have responded to these serious problems by reducing spending, including cutting jobs, and virtually freezing all expansion satellite plans.

Although lower prices and vigorous competition are important public policy objectives, the excessive investment in satellite and undersea fiber capacity has resulted in an international satellite services market that today is unhealthy. This unhealthy condition represents a meaningful risk to U.S. national security interests and the public interest more broadly. Commercial satellites have been identified as critical

infrastructure by Congress in section 201 of the Homeland Security Act of 2002, as well as by the Government Accountability Office and the President's National Security Telecommunications Advisory Committee. They are of enormous strategic importance to the U.S. Government and particularly to the Defense Department, which increasingly relies on commercial space operators for vital services. Indeed the U.S. Government is the largest single user of New Skies' satellite fleet and we are proud of the role our company plays in supporting the U.S. Government's activities around the world. In light of the critical role the commercial satellite services industry plays, it is of vital importance that the industry players are commercially and operationally sound.

In addition to the critical infrastructure commercial satellite operators provide to government users, these operators are important customers of the U.S. companies that produce satellites and launch vehicles, including Lockheed Martin, Boeing, and Space Systems/Loral. The decision by international satellite services providers to curtail their investment and expansion plans in the face of the downturn in the market has severely impacted U.S. satellite manufacturers and launch service providers. When this happens, the full burden of ensuring that these important industries have sufficient business activities falls on the government sector—and the U.S. taxpayer—alone.

The present unhealthy condition of the international satellite services market is not necessarily a cause for great alarm. Most of the participants in this market remain financially stable and their satellite fleets are operationally robust, albeit underutilized. While the international satellite services market today is near the bottom of a natural boom and bust cycle that is common in many industrial sectors, including the broader telecommunications sector, natural market forces, over time, should put the sector on a sounder footing just as it does in other sectors.

Yet in contrast to almost every other sector of the telecommunications industry, a full and necessary rationalization of the international satellite services market has yet to occur. In spite of all the overcapacity, we still have roughly the same number of active satellite operators today—39—as the 42 we had in 1999. Approximately a dozen additional companies are in various stages of plans to launch still more FSS satellites. In other words, today we have about the same number of operators or more battling for the same pool of revenues we had five years ago, but with substantially more satellite capacity and abundant undersea fiber that can be used for certain of the same services. Although some consolidation has taken place over the years, most industry executives and observers anticipate more will occur to order to redress the present threats to the industry and position the operators to offer a broader array of secure and reliable services to commercial and governmental users.

In sum, while the privatization policy of ORBIT has helped to open markets and, in this regard, enhanced competition in the international satellite services marketplace, excessive investment in satellite and undersea fiber capacity now threaten this strategic industry's health.

#### *New Skies Under the ORBIT Act*

In addition to the challenges posed during the last five years by the general business environment, meeting the ORBIT Act's requirements also came with considerable economic and regulatory burdens for New Skies, our employees, and the new shareholders that Congress in effect created by mandating that we conduct an IPO. Our underwriters in the 2000 IPO, for example, were able to market our shares only at the lowest end of the estimated offering price range. With market conditions in the telecommunications sector remaining weak through the early part of this decade, our share price for some periods fell to below half of what it sold for in our 2000 IPO.

Later, when we announced a plan to buy back 10 percent of our shares in an effort to increase value for our shareholders, a competitor pointed to ORBIT as the basis for seeking an emergency FCC inquiry into whether we were undoing the shareholder dilution that our IPO had achieved. Although the FCC ultimately rejected that claim—in fact, the buyback achieved even greater dilution—we were forced to spend valuable time and resources over a period of several months defending our business strategy, which in any other publicly traded company is a commonly used and well-accepted practice.

ORBIT over time has created operational uncertainties for us as well. Arm's length transactions with Intelsat that are otherwise reasonable and customary in the industry, such as the joint use of certain satellites in exchange for an equitable revenue share, must be put through an additional level of rigorous legal review that no other company must undertake. That is because ORBIT limits certain business dealings between the two companies, but is unclear as to how far those limits extend. In addition, ORBIT's prohibition on New Skies and Intelsat combining, while

perhaps justifiable at the time of ORBIT's passage, now represents an unnecessary obstacle to the needed rationalization of the sector.

*ORBIT Must Be Updated to Keep Pace with the New Satellite Marketplace*

Having achieved everything that ORBIT was designed to achieve, Congress should now reexamine the satellite landscape and consider whether the statute requires updating in light of the tremendous changes that have taken place since ORBIT's passage. In the fully competitive satellite world we have today, which in large part is a result of ORBIT's policies, there is no longer any economic or other policy justification for keeping New Skies bound by rules and regulations of a kind that apply to no other competitive company of which we are aware.

All of the other global satellite operators, as well as Eutelsat, are substantially larger than we are in terms of both the number of satellites they have in orbit as well as in terms of their revenues. Due to their larger sizes, these operators are able to take advantage of greater economies of scale, enabling them to provide heightened levels of network redundancy and to devote more resources—both human and financial—to sales, operations, product development, and strategic alliances and acquisitions.

In order to enhance our own competitive position and the quality and breadth of services we offer our customers, one of our objectives is to pursue an acquisition, joint venture, strategic combination, or other strategic transaction with another satellite operator as and when suitable opportunities arise. Under appropriate circumstances, we also would consider acquiring rights to use additional orbital locations or frequencies, additional in-orbit satellites, or other facilities and components necessary for the provision of bundled services. Intelsat is one of a number of entities with whom it would be logical for New Skies to consider such arrangements. However, in light of the restrictions in ORBIT, including those that explicitly apply to any dealings we may have with Intelsat, New Skies faces uncertainty with respect to its ability to enter into such arrangements, thereby limiting our opportunities, placing us at an unfair competitive disadvantage, and imperiling what may be an otherwise sensible way to achieve the rationalization the sector sorely needs at this time.

We believe that Congress can justifiably claim credit for the remarkable changes in the satellite industry over the last half-dozen years, which were in part the result of ORBIT's privatization and competition policies. We also believe, respectfully, that it is now time for Congress to allow every competitor in the satellite industry to operate on a level playing field. Failing to update the statute to make it more consistent with present-day realities in the satellite marketplace will impede the operation of the natural market forces necessary to strengthen the industry for the benefit of customers (including government users), suppliers (including U.S. manufacturers of satellites and rockets), employees and shareholders.

It is probable that the industry will consolidate; we have seen some signs of that already. If there is in fact further consolidation, the process should be market-driven, without the need for the kind of special restrictions that are found in ORBIT. And now that the market has become fully privatized and fully competitive, there is no risk that any contemplated transaction might escape the same thorough regulatory review to which every other company is subject. Through the FCC's public interest test, the application of the antitrust laws, and mechanisms that ensure the highest level of scrutiny for any transaction that implicates national security, to name a few, Congress has enacted many alternate safeguards to ensure that ORBIT's overriding objective—a competitive international satellite services market—is preserved. We urge you to pass legislation updating ORBIT Act to address these current realities.

Thank you for your consideration, and I will be pleased to answer any questions you may have.

SUMMARY OF ORBIT ACT PROVISIONS APPLICABLE TO NEW SKIES SATELLITES N.V.

*Provisions Specifically Applicable to New Skies Under Section 623:*

- Public offering conducted no later than July 31, 2001
- No interlocking officers, directors, or employees with INTELSAT
- No spectrum assigned to INTELSAT as of date of enactment to be transferred to New Skies
- Any merger, ownership or management ties, or exclusive arrangements between INTELSAT and New Skies prohibited until 11 years after completion of INTELSAT's privatization

*Criteria Applicable to New Skies as well as INTELSAT, Inmarsat, and Future Successor Entities Under Section 621:*

- Each shall operate as an independent commercial entity with a pro-competitive ownership structure
- IPO shall substantially dilute aggregate ownership of each entity by signatories or former signatories
- No IGO to have ownership interest in INTELSAT, its successor entities, or New Skies
- No IGO to have more than minimal ownership in Inmarsat or its successor entities
- No IGO privileges and immunities or preferential access to orbital locations
- Each entity to be a national corporation or similar accepted commercial structure, subject to the laws of the nation in which incorporated
- Shares of successor entities and New Skies to be listed for trading on one or more major exchanges with transparent and effective securities regulation
- Majority of directors of successor entities and New Skies not to be directors, employees, officers, or managers, or otherwise serve as representatives of any signatory or former signatory
- No director of successor entities and New Skies to be a director, employee, officer or manager of any IGO remaining after privatization
- Board of directors of successor entities and New Skies to have a fiduciary obligation
- No officers or managers of successor entities and New Skies to be officers or managers of any signatories or former signatories, or to have any direct financial interest in or financial relationship to any signatories or former signatories
- No directors, officers, or managers of successor entities and New Skies who hold such positions in any IGO
- Any transactions or other relationships between or among any of these entities to be conducted on an arm's length basis.
- Successor entities and New Skies subject to the jurisdiction of a nation or nations that have effective telecom competition laws and regulations, are signatories to the WTO Basic Telecom Agreement, and have a schedule of commitments in such Agreement that includes non-discriminatory market access to their satellite markets.

Mr. UPTON. Thank you very much. Mr. Spector.

**STATEMENT OF PHILLIP L. SPECTOR**

Mr. SPECTOR. Mr. Chairman, Mr. Markey, members of the subcommittee, on behalf of INTELSAT, I want to thank you for the opportunity to appear today before the subcommittee. We appreciate the opportunity to comment on the progress that has been made in privatizing the satellite communications marketplace.

INTELSAT needs no introduction to this subcommittee. We are a leading provider of satellite communications services and solutions, with over 40 years of experience in operating communications satellites. Our customers include major U.S. corporations, television broadcasters, and other providers of video services, and many governments, including particularly the U.S. Government.

If you will indulge me, Mr. Chairman, I will recite a bit of my personal history, because it provides a useful metaphor for the larger topic we are here to discuss.

I joined INTELSAT only recently, some 2 months ago, after over 20 years in the private practice of law here in Washington. During my years in private practice, I represented not only INTELSAT, but also PanAmSat and SES Global.

I represented PanAmSat in the late 1980's and the early 1990's, at a time when INTELSAT appears to be acting to foreclose competition from PanAmSat and others in the global satellite communications marketplace. Like Mr. Markey, I worked closely with that tireless advocate for satellite competition, Renee Ensomo. With the

encouragement of this Congress and other parts of the U.S. Government, INTELSAT began changing to recognize competitive realities. And by the late 1990's, it was clearly moving away from its legacy as an intergovernmental organization. By the time that the ORBIT Act was passed in 2000, INTELSAT was well along the road toward privatization, and we became an entirely private company nearly 4 years ago in July 2001.

I am pleased to report to you today that in January 2005, INTELSAT has its signatory interest diluted to zero. That is why I joined INTELSAT as its general counsel, because the company today is owned 100 percent by private commercially oriented non-governmental investors. Their only agenda is the same agenda that all investors in private companies have: to offer more and better services at lower prices, and thereby to meet customer needs and to build shareholder value.

The ORBIT Act played a key role in moving INTELSAT to the place it is today, a private company serving customer needs in a competitive marketplace. Thanks to the members of this committee and of this Congress, the goals of the ORBIT Act have been achieved.

There is one area, however, in which the ORBIT Act needs fine-tuning. As written, the Act prohibits the re-affiliation, by merger or otherwise, of a privatized INTELSAT and any separated entity. The separated entity referred to in the Act is New Skies, a company that was spun off from the old INTELSAT prior to privatization. New Skies is today, like INTELSAT, 100 percent owned by private investors having no relationship to the old signatories. The prohibition on re-affiliation may have made sense in 2000 when it was envisioned that both INTELSAT and New Skies, while they might privatize, would continue to have substantial signatory ownership for many years to come. Five years later, with both INTELSAT and New Skies owned entirely by private investors, the prohibition makes no sense. Indeed, I can not think of any other statute of the United States that flatly prohibits the merger of two entirely private companies.

It is important to emphasize that other U.S. statutes provide substantial protection to ensure that public policy goals are served. Any merger of INTELSAT and New Skies would be subject to review and approval by the Department of Justice under the anti-trust laws, and by the Federal Communications Commission under its public interest standard. All interested parties who conceivable might be affected by the merger, competitors, customers, and public interest groups, would have an opportunity to voice any objections they might have.

In summary, Mr. Chairman, we at INTELSAT see no valid public policy purpose served by the current prohibition on a re-affiliation with New Skies, and we urge this subcommittee in the House to work with us on amending the statute to strike out the prohibition.

In closing, let me repeat that the ORBIT Act was successful in transforming the satellite communications marketplace, and that the Congress is to be given credit for this impressive accomplishment.



I thank you for your attention this morning, and stand ready to answer any questions.

[The prepared statement of Phillip L. Spector follows:]

PREPARED STATEMENT OF PHILLIP L. SPECTOR, EXECUTIVE VICE PRESIDENT AND  
GENERAL COUNSEL, INTELSAT HOLDINGS, LTD.

Mr. Chairman, on behalf of Intelsat, I thank you for the opportunity to appear today before the Subcommittee. We particularly appreciate the opportunity to comment on the ORBIT Act, and on the progress that has been made in privatizing the satellite communications marketplace.

Intelsat needs no introduction to this Subcommittee. We are a leading provider of satellite communications services and solutions, with over 40 years of experience in operating communications satellites. Our customers include major U.S. corporations, television broadcasters and other providers of video services, and many governments, including particularly the United States Government. We compete vigorously with both other satellite operators and those who operate terrestrial and undersea facilities.

If you will indulge me for a moment, Mr. Chairman, I will recite a bit of my personal history, because it provides a useful metaphor for the larger topic we are here to discuss. I joined Intelsat only recently, some two months ago, after over 20 years in the private practice of law in Washington, D.C. During my years in private practice, I represented not only Intelsat, but also two other large satellite service providers, PanAmSat and SES Global.

In particular, I represented PanAmSat in the late 1980s and early 1990s, at a time when Intelsat appeared very much to be acting to foreclose competition from PanAmSat and others in the global satellite communications marketplace. With the encouragement of this Congress and other parts of the U.S. Government, Intelsat began changing to recognize competitive realities, and by the late 1990s it was clearly moving away from its legacy as an intergovernmental organization. By the time that the ORBIT Act was passed in 2000, Intelsat was well along the road toward privatization, and we became an entirely private company nearly four years ago, in July 2001.

It would have been unthinkable for me, as one of Intelsat's active adversaries over several years, to have joined the pre-privatization Intelsat, but I also do not think I would have joined the Intelsat organization as it existed from mid-2001 until January of this year. Although Intelsat had privatized, it was still owned by many of the same Signatories whose ownership was of concern to the Congress when the ORBIT Act was passed in 2000. Thus the ORBIT Act appropriately required that the influence of the Intelsat Signatories be substantially diluted.

I am pleased to report to you today, Mr. Chairman, that in January 2005 Intelsat had its Signatory interest diluted to zero. The Intelsat that I joined as General Counsel is owned 100% by private, commercially oriented, non-governmental investors. Their only agenda is the same agenda that all investors in private companies have: to offer more and better services at lower prices, and thereby to meet customer needs and to build shareholder value.

The ORBIT Act played a key role in moving Intelsat to the place it is today, a private company serving customer needs in a competitive marketplace. In this respect, the ORBIT Act has been a resounding success, and those Members of Congress who were "present at the creation" can take considerable pride in this success. More than is the case with most statutes, there is a clearcut opportunity to say here: The goals of the ORBIT Act have been achieved.

There is one area, however, in which the ORBIT Act needs fine-tuning. As written, the Act prohibits the "reaffiliation" by merger or otherwise of a privatized Intelsat and "any separated entity." The "separated entity" referred to in the Act is New Skies Satellites, a company that was spun off from the old Intelsat prior to privatization. New Skies is today, like Intelsat, 100% owned by private investors having no relationship to the old Signatories.

The prohibition on reaffiliation was included in the ORBIT Act to ensure that the spin-off of New Skies would constitute an irreversible first step on Intelsat's road to privatization. The prohibition may have made sense in 2000, when the Act was passed, at a time when Intelsat was still an intergovernmental organization debating privatization and New Skies was owned by Intelsat's Signatories. But five years later, with both Intelsat and New Skies owned entirely by private investors, the prohibition makes no sense. Indeed, I cannot think of any other statute of the United States that flatly prohibits the merger of two entirely private companies.

If New Skies were to be up for sale, and if Intelsat were to be interested in buying New Skies, we would likely be just one of several interested buyers. But I see no reason why this Congress would want to limit artificially the universe of buyers, as the ORBIT Act does today. Such a limitation is simply anti-competitive, when I know that this Subcommittee and this Congress are focused on enhancing competition.

It is also important to emphasize that, if Intelsat and New Skies were to agree on a merger, other U.S. statutes provide substantial protection to assure that public policy goals are served. Any such merger would be subject to review and approval by the Department of Justice under the antitrust laws, and to review and approval by the Federal Communications Commission under the public interest standard of the Communications Act. In the context of both of these processes, moreover, as is always the case in merger review, all interested parties who conceivably might be affected by the merger—competitors, customers, and public interest groups—would have an opportunity to voice any objections they might have.

In summary, Mr. Chairman, we at Intelsat see no valid public policy purpose served by the current prohibition on our reaffiliation with New Skies, and we urge this Subcommittee and the House to work with us on amending the statute to strike out this prohibition. In closing, let me repeat that the ORBIT Act was successful in transforming the satellite communications marketplace, and that the Congress is to be given credit for this impressive accomplishment.

I thank you for your attention this morning, and stand ready to answer any questions that Members of the Subcommittee may have.

Mr. UPTON. Thank you. Mr. Auckenthaler.

#### STATEMENT OF ALAN AUCKENTHALER

Mr. AUCKENTHALER. Mr. Chairman, Mr. Markey, members of the subcommittee, good morning. My name is Alan Auckenthaler. I am a Vice President of Inmarsat Ventures, Limited, which in ORBIT terms is the successor entity to the International Mobile Satellite Organization. But I was also the general counsel of Inmarsat and the predecessor intergovernmental organization from 1994 until last year, throughout virtually the entire privatization and ORBIT compliance process.

On behalf of my company, I thank the subcommittee for holding this hearing and for your interest in the status of our privatization. I also thank the members of this subcommittee for supporting three amendments to the ORBIT Act to give us more time and new ways to comply with the law in light of changed conditions in the financial markets.

Let me begin by describing some exciting recent business developments at Inmarsat, because they demonstrate how privatization is resulting in real benefits to our customers in the U.S. Federal Government and American businesses.

Our privatization process started long before ORBIT in 1993, but it is nevertheless a remarkable policy success for the United States, because the U.S. delegation played a leading role at the intergovernmental organization in forging a political consensus in support of privatization, and in driving the process to completion. A month ago, on March 11, the largest and most powerful commercial communications satellite ever built was successfully launched on Lockheed Martin's Atlas V rocket from Cape Canaveral. This was the first of our Inmarsat IV satellites. These new satellites will enable our distributors to provide mobile and portable broadband services at around half a megabit per second to customers using terminals no larger than a notebook computer. This is an example made by Hughes Network Systems here in the United States. We call these services broadband global area network, or BGAN. The Inmarsat

system is already relied upon by the U.S. Department of Defense, our largest customer, to which we devote at least 25 percent of our total network capacity, and by the Coast Guard and the FAA for safety communications, and by various Federal law enforcement agencies. We expect to be the communications link of choice when long-range vessel tracking and container monitoring systems are developed to comply with the requirements of the Maritime Transportation Security Act.

American business also depends on Inmarsat. Examples include the Deere Company's Precision Farming Service, the vessel monitoring system that is used to manage the sustainability of our fisheries, use of portable Inmarsat terminals by companies engaged in energy and mining exploration, and construction projects in remote regions of the world, and by journalists for digital news gathering.

These BGAN services that our distributors will provide via our new Inmarsat IV satellites will enable these customers and others to do all of these things and more at broadband speed and at less cost. We have vetted our company on the promise of broadband. We invested \$1.5 billion in the construction and launch of our satellites and the associated ground infrastructure. And this is the point that I want to make: this kind of risk-taking would not have been possible in an intergovernmental organization. The organization anticipated that more than 10 years ago. As I said, the process of privatizing Inmarsat began in 1993. Led by the U.S. delegation, Inmarsat pioneered the privatization model that was subsequently followed by INTELSAT and UTELSAT. The Inmarsat business was transferred in April 1999 from the intergovernmental organization to a newly created private company that had no privileges and immunities. Thus when Congress passed the ORBIT Act in March 2000, we were already well on our way to satisfying the privatization criteria laid down there.

In December 2003, two private equity funds managed by Apax Partners and Premira, acquired the majority of Inmarsat. Last October, the Congress amended the ORBIT Act to accept this new way of substantially diluting former signatories as an alternative to an IPO. On November 15, we filed a compliance certification with the Commission, and we are awaiting their decision.

I do think there is a need to update the ORBIT Act in light of the ownership changes, and the changes in the competitive marketplace that have occurred since the Act was passed 5 years ago. Inmarsat would be pleased to work with the committee on such legislation.

Thank you for this opportunity to testify.

[The prepared statement of Alan Auckenthaler follows:]

PREPARED STATEMENT OF ALAN AUCKENTHALER, VICE PRESIDENT, INMARSAT  
VENTURES LIMITED

My name is Alan Auckenthaler. I am a Vice President of Inmarsat Ventures Limited, which in ORBIT terms is the privatized "successor entity" to the International Mobile Satellite Organization. I was General Counsel of Inmarsat and the predecessor intergovernmental organization from 1994 until last year, throughout virtually all of the privatization and ORBIT compliance process.

On behalf of my company, I thank the Subcommittee for holding this hearing, and for its interest in the status of our privatization. I also thank the Members of the Subcommittee for supporting amendments to the ORBIT Act three times during the

past few years to give us more time and new ways to comply in light of financial market conditions not foreseen when the Act was passed.

Let me begin by describing some exciting recent business developments at Inmarsat, because they demonstrate how privatization is resulting in real benefits to our customers in the federal government and American business, and to others around the world. Our privatization process started in 1993, long before ORBIT, but it is nevertheless a remarkable policy success for the United States, because the U.S. delegation played a leading role at the intergovernmental organization in forging a political consensus in support of privatization and in driving the process to completion.

A month ago, on March 11th, the largest and most powerful commercial communications satellite ever built was successfully launched on Lockheed Martin's Atlas V rocket from Cape Canaveral. This was the first of our Inmarsat-4 satellites. With 60 times the power, 228 spot beams, and advanced modulation and coding techniques, the Inmarsat-4 satellites will use spectrum up to 17 times more efficiently than our previous satellites. The Inmarsat-4 satellites will enable our distributors to provide mobile and portable broadband services at around half a megabit per second to customers using terminals no larger than a notebook computer. We call these services Broadband Global Area Network or BGAN.

The Inmarsat system is already relied on for the Global Maritime Distress and Safety System and by the United States Coast Guard for Search and Rescue operations. It is also relied on by the Federal Aviation Administration to support Air Traffic Control communications. The United States Department of Defense is our largest customer. We devote at least 25% of our total network capacity to serve DoD. There has been heavy usage of Inmarsat services in Afghanistan and Iraq. In addition, Inmarsat supplies mission-critical communications services on United States Air Force VIP planes, including Air Force One, the 89th Air Wing at Andrews Air Force Base that transports members of Congress, and the planes of regional Combatant Commanders. U.S. law enforcement agencies such as the Coast Guard, FBI, Immigration and Customs Enforcement, and Drug Enforcement Administration, use our services. We expect to be the communications link of choice when long-range vessel tracking and container monitoring systems are developed to comply with the Maritime Transportation Security Act.

American business depends on Inmarsat too. The Deere Company uses Inmarsat's satellite communications for its precision farming service. U.S. flag vessels have integrated Inmarsat communications into ship operations and to provide crew calling. The Vessel Monitoring System that industry and government rely on to manage the sustainability of fisheries by tracking commercial fishing vessels and enforcing fishing regulations uses our satellite network. Portable Inmarsat terminals are used in remote regions around the world by American companies engaged in energy and mining exploration and construction projects, and by journalists for digital news gathering. You may remember watching live broadcasts by journalists using Inmarsat video phones on vehicles in troop caravans driving north in the opening days of the war in Iraq.

Agencies of the United Nations and non-governmental organizations like the Red Cross rely on Inmarsat communications to respond to natural disasters, like the tsunami last year, or to help refugees displaced by wars. Inmarsat is a partner of NetHope, a consortium of U.S.-based aid agencies that provide communications infrastructure to support assistance activities in developing countries.

The BGAN services that our distributors will provide via our new Inmarsat-4 satellites will enable these customers and others to do all of these things and more at broadband speed and at less cost. We have bet our company on the promise of broadband, investing \$1.5 billion dollars in the construction and launch of our Inmarsat-4 satellites and the associated ground infrastructure.

This kind of risk-taking would not have been possible in an intergovernmental organization. The organization anticipated that more than 10 years ago. The process of privatizing Inmarsat began in 1993. Led by the U.S. delegation, Inmarsat pioneered the privatization model subsequently followed by Intelsat and Eutelsat. The Inmarsat business was transferred in April 1999 from the intergovernmental organization to a newly-created private company.

Thus, when Congress passed the ORBIT Act in March 2000, we were already well on our way to satisfying the privatization criteria laid down there. The Federal Communications Commission determined in October 2001 that we had satisfied all ORBIT criteria except the requirement to conduct an IPO to substantially dilute the aggregate ownership of former Signatories.

An IPO was part of the privatization model agreed upon by the Inmarsat stakeholders. They set a target for the company to conduct an IPO within approximately two years. Like Congress, they could not foresee the collapse of the IPO markets.

The company prepared five times for an IPO, spending over \$10 million dollars on external fees, as well as demanding an enormous amount of internal management effort. We had to ask Congress for two deadline extensions, which were granted in November 2001 and June 2003. Again, I express our appreciation for these extensions.

Notwithstanding the problems of the IPO markets, private equity funds did see the value in satellite companies. In December 2003, two funds, managed by Apax Partners and Permira, acquired the majority of Inmarsat. As a result, the aggregate ownership by shareholders that had formerly been Signatories in the intergovernmental organization was reduced to 42.54%. Of 85 former Signatories, only 15 retain an on-going ownership interest. Telenor Satellite Services of Norway, COMSAT Investments (now owned by Lockheed Martin), and KDDI Corporation of Japan own 14.95%, 13.96%, and 7.55% respectively. This result far exceeds the dilution that could have been achieved through an IPO of equity shares. And our new owners did conduct an IPO of debt securities that had the effect of subjecting Inmarsat to substantially the same kind of securities regulation that would have applied if we had listed equity securities.

We spent most of 2004 seeking a determination from the Commission that we had satisfied the IPO requirement in ORBIT by means of the private equity takeover and IPO of debt securities, but the Commission had concerns about whether Congress intended them to have discretion to make such a finding. Congress solved this problem by further amending the ORBIT Act last October. That amendment allows us to satisfy ORBIT without an IPO of equity securities if former Signatories neither own a majority of the financial interests in the company nor retain effective control through other means. We filed a certification to that effect with the Commission on November 15th, and are waiting for their decision.

If this Committee is now going to consider additional amendments to the ORBIT Act, I submit the following examples of restrictions that no longer make sense and should be eliminated:

- Section 621(5)(D)(ii)(II) prohibits our officers or managers from owning shares in telecommunications companies that were formerly Signatories, even if those companies did not remain Inmarsat shareholders after the takeover. Although the Commission did adopt a *de minimis* threshold, the prohibition nevertheless constrains the personal investment opportunities of our officers and managers, and also places an administrative burden on Inmarsat to annually survey these staff to confirm that they have not exceeded the allowed threshold.
- Section 624 prohibits reaffiliation with ICO Global Communications for 15 years, and also prohibits interlocking directorates. In case you don't remember, ICO was spun off by Inmarsat in 1995. It has since gone through Chapter 11 and does not yet have an operating system. I can imagine no public policy reason for retaining this prohibition.

The purpose of the ORBIT Act was to ensure that Intelsat, New Skies, and Inmarsat completed their privatizations in a pro-competitive way. That objective has been realized. Inmarsat, and the many independent American companies across the United States engaged in distributing our services, manufacturing equipment for our network, and developing innovative service applications to meet the needs of government and commercial customers here and abroad, are ready to use our new Inmarsat-4 satellites to deliver BGAN and other services in the competitive marketplace.

Thank you for this opportunity to testify. I look forward to working with the Subcommittee on further legislation to update the ORBIT Act in light of the ownership changes and changes in the competitive marketplace that have occurred since the Act was passed five years ago.

Mr. UPTON. Thank you very much. Ms. Hecker.

#### STATEMENT OF JAYETTA Z. HECKER

Ms. HECKER. Good morning, Mr. Chairman, and other members of this committee. My name is Jayetta Hecker, and I am a director at GAO, and I generally have been overseeing transportation deregulation, and have recently taken over some responsibility for telecommunications issues. I am very pleased to be here to discuss the privatization of INTELSAT and the implementation of the ORBIT Act. It is based on a report that we completed recently for this committee and the Senate.

The three areas that I will speak about will be the initial impetus for the privatization of INTELSAT. Second, the extent to which implementation has occurred consistent with the ORBIT Act provisions. And finally, the improvement in market access that has resulted after the ORBIT Act.

On the first issue of the impetus, I think many of you correctly set this back to 1962 with the U.S. national policy trying to promote the creation of a global satellite communication system. The key in that period was the premise or the assumption that the risk and the costs of deploying a global satellite system made this investment or this development a natural monopoly. And that, of course, is why INTELSAT and Inmarsat were set up the way they were. But very, very soon thereafter, really, demand in the telecom industry grew, and the telecommunications technology was evolving and competitors were growing. It was not a natural monopoly. So as the marketplace grew, the restrictions left on INTELSAT, the requirements that countries only provide primary access to INTELSAT, really impeded the development of these other emerging firms. And the real impetus was that these firms felt that there was not a level playing field, and it was time to open up the market.

At the time, INTELSAT itself was realizing that the complex bureaucratic structure of an IGO was not workable, and they could not compete. They knew they were, in fact, confronted by competing firms, and they were not adapting, they were not investing, they were not really able to advance and continue to mature. So they, too, called for and were interested in taking initial steps to privatization.

But the real action, I think, was locked into place with the ORBIT Act of 2000, with the Congress calling for the full privatization of INTELSAT, and very specific requirements laid out to ensure that that occurred.

Now, the issue of whether privatization has been consistent with the Act, really, I think Mr. Abelson covered, because you put FCC in charge of making the determination of whether the actions were taken consistent with the Act. And in our report and as Mr. Abelson has said, that was really determined 2 months before the actual privatization of INTELSAT in 2001 in an advance review of the plan, and a determination that it was consistent with the requirements in many respects. But the grant of operating rights within the U.S. was made conditional on the IPO, which was the remnant requirement.

The recent actions with INTELSAT stock being sold to a consortium really changed the environment, but the Congress anticipated that with changes last October that recognize that the IPO was really a proxy for the full dilution and privatization of the firm, but that other means were acceptable. And so now we are looking at one final action, I guess, by the FCC that has to rule on this determination, and this complete dilution from former signatories.

The final issue is the one of market access, which of course, is essential for a market to occur, a global market, and our work in the mid-1990's and a lot of the complaints that led up to the ORBIT Act made a very public concern about the limitations of access globally. Mr. Dingell was right that our report gave primary

credit, as did the stakeholders we met with, the primary change was the WTO international agreement to open up telecom markets. That really was the commitment by countries to actually remove existing barriers. Now, the ORBIT Act played a very important and complimentary role in accelerating and facilitating the privatization of the industry domestically, and also internationally, the removal of the national entities in the telecom center.

In sum then, the Congress intent in the ORBIT Act, promoting a competitive and fully privatized global satellite communication market, has been completely achieved. INTELSAT has been successfully transformed into a fully private held for-profit corporation. There are other global satellite companies, as well as other regional companies, that users can go to. Moreover, as you know, technology has continued to evolve and users can turn to other options, even if the satellite industry is concentrated. There are other ways to move voice and data, and other telecom services, as these people all know from their declining business and pressure on their prices.

So in conclusion, the Act was a success. Our work did not address the issue of the New Skies issues, but I would be happy to take any questions that might be helpful.

[The prepared statement of JayEtta Z. Hecker follows:]

PREPARED STATEMENT OF JAYETTA Z. HECKER, DIRECTOR, PHYSICAL INFRASTRUCTURE, OFFICE OF CONGRESSIONAL RELATIONS, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Chairman and Members of the Subcommittee: I am pleased to be here today to discuss the privatization of INTELSAT and the implementation of the ORBIT Act. In 2000, the Congress passed the Openmarket Reorganization for the Betterment of International Telecommunications Act<sup>1</sup> (ORBIT Act) to help promote a more competitive global satellite communication services market. Today we will discuss (1) the impetus for the privatization of INTELSAT<sup>2</sup> as competition developed during the 1990s, (2) the extent to which the privatization steps required by the ORBIT Act have been implemented, and (3) whether access by global satellite companies to non-U.S. markets has improved since the enactment of the ORBIT Act.

To address these issues, we have drawn upon our previous work on the international satellite market and the ORBIT act. We issued two reports on the international satellite market in 1996.<sup>3</sup> In addition, we issued two reports in September 2004, one of which focused on the implementation of the ORBIT Act;<sup>4</sup> see appendix I for a list of related GAO products. For the latter report, we conducted semistructured interviews with satellite service providers and experts. Additionally, we interviewed officials from the Federal Communications Commission (FCC), the United States Trade Representative; the Department of State; and the National Telecommunications and Information Administration of the Department of Commerce. We conducted our work for the September 2004 report from February through June 2004 in accordance with generally accepted government auditing standards.

Following is a summary of our findings:

<sup>1</sup>Pub. L. 106180, 114 Stat. 48 (2000).

<sup>2</sup>The official name of the intergovernmental organization was INTELSAT—all capital letters. After privatization, the privatized company is known as Intelsat. We make this distinction throughout this report.

<sup>3</sup>See GAO, *Telecommunications: Competitive Impact of Restructuring of the International Satellite Organizations*, GAO/RCED96204 (Washington, D.C.: July 8, 1996); and GAO, *Telecommunications: Competition Issues in International Satellite Communications*, GAO/RCED971 (Washington, D.C.: Oct. 11, 1996).

<sup>4</sup>See GAO, *Telecommunications: Intelsat Privatization and the Implementation of the Orbit Act*, GAO04891 (Washington, D.C.: Sept. 13, 2004); and GAO, *Tax Policy: Historical Tax Treatment of INTELSAT and Current Tax Rules for Satellite Corporations*, GAO04994 (Washington, D.C.: Sept. 13, 2004).

- When commercial satellite technology was first deployed, a worldwide system was seen as the most efficient means to facilitate the advancement of a fully global provider. INTELSAT was thus established as an intergovernmental entity that was protected from competition in its provision of global satellite communications services. By the 1980s, however, technology developments enabled private companies to efficiently compete for global communications services, and in 1984, President Reagan determined that it would be in the national interest of the United States for there to be greater competition in this market. New commercial satellite systems emerged, but within a few years, these providers became concerned that INTELSAT enjoyed certain advantages stemming from its intergovernmental status that impeded others from effectively competing. The new satellite companies began to argue that the marketplace would not become fully competitive unless INTELSAT became a private company that no longer enjoyed such advantages. At about the same time, decision makers within INTELSAT decided to privatize the organization because of the difficulties of making business decisions within an intergovernmental entity.
- Just prior to INTELSAT's privatization in July 2001, FCC determined that INTELSAT's privatization plan was consistent with requirements of the ORBIT Act. FCC thus authorized Intelsat, LLC—the U.S. subsidiary of the privatized entity Intelsat Ltd.—to use its U.S. satellite licenses to provide services within the United States pending an initial public offering (IPO) of securities that was mandated by the ORBIT Act to occur at a later time. In 2004, however, new legislation allowed Intelsat to forgo an IPO if it achieved substantial dilution of its “signatory” ownership—or dilution of ownership by those entities that had been the signatories to INTELSAT when it was an intergovernmental entity. Since Intelsat has recently been sold to a consortium of four private investors, it no longer has, according to an Intelsat official, any former signatory ownership. FCC is still reviewing this transaction to determine whether Intelsat has met the requirements of the ORBIT Act as amended and thus no longer is required to hold an IPO.
- Most of the stakeholders we spoke with said that access to non-U.S. satellite markets has generally improved during the past decade. This improvement in market access is generally attributed to global trade agreements and privatization trends. Despite this general view, some satellite companies expressed concerns that some market access issues still exist. These remaining market access problems were attributed to foreign government policies that may limit or slow satellite competitors' access to certain markets. For example, some companies noted that some countries may favor domestic satellite providers or may choose to continue obtaining service from Intelsat because of long-term business relationships that were forged over time. Nevertheless, Intelsat officials noted that it seeks market access on a transparent and nondiscriminatory basis and that Intelsat has participated with other satellite operators, through various trade organizations, to lobby governments to open their markets.

#### BACKGROUND

The Congress passed the Communications Satellite Act of 1962 to promote the creation of a global satellite communications system. As a result of this legislation, the United States joined with 84 other nations in establishing the International Telecommunications Satellite Organization—more commonly known as INTELSAT—roughly 10 years later.<sup>5</sup> Each member nation designated a single telecommunications company to represent its country in the management and financing of INTELSAT. These companies were called “signatories” to INTELSAT and were typically government-owned telecommunications companies, such as France Telecom, that provided satellite communications services as well as other domestic communications services. Unlike any of the other nations that originally formed INTELSAT, the United States designated a private company, Comsat Corporation, to serve as its signatory to INTELSAT.

The ORBIT Act, enacted by the Congress in March 2000, was designed to promote a competitive global satellite communication services market. The act did so primarily by calling for the privatization of INTELSAT after about three decades of operation as an intergovernmental entity.<sup>6</sup> The ORBIT Act required, for example, that INTELSAT be transformed into a privately held, for-profit corporation with a

<sup>5</sup>By the time Intelsat privatized in 2001, 148 countries had become parties to the intergovernmental organization.

<sup>6</sup>The act also pertained to Inmarsat. A discussion of Inmarsat's privatization is outside the scope of this testimony.



board of directors that would be largely independent of former INTELSAT signatories. Moreover, the act required that the newly privatized Intelsat retain no privileges or other benefits from governments that had previously owned or controlled it. To ensure that this transformation occurred, the Congress imposed certain restrictions on the granting of licenses that allow Intelsat to provide services within the United States. The Congress coupled the issuance of licenses granted by FCC to INTELSAT's successful privatization under the ORBIT Act. That is, FCC was told to consider compliance with provisions of the ORBIT Act as it made decisions about licensing Intelsat's domestic operations in the United States. Moreover, FCC was empowered to restrict any satellite operator's provision of certain new services from the United States to any country<sup>7</sup> that limited market access exclusively to that satellite operator.<sup>8</sup>

CONCERNS THAT INTELSAT ENJOYED COMPETITIVE ADVANTAGES PROVIDED IMPETUS  
FOR ITS PRIVATIZATION

When satellite technology first emerged as a vehicle for commercial international communications, deploying a global satellite system was both risky and expensive. Worldwide organizations were considered the best means for providing satellite-based services throughout the world. When INTELSAT was established, the member governments put in place a number of protections to encourage its development. In essence, INTELSAT was created as an international monopoly—with little competition to its international services allowed by other satellite systems, although domestic and other satellite systems were allowed under certain conditions. As such, during the 1970s and early 1980s, INTELSAT was the only wholesale provider of certain types of global<sup>9</sup> satellite communications services such as international telephone calls and relay of television signals internationally.<sup>10</sup>

As satellite technology advanced, it became economically more feasible for private companies to develop global satellite systems. This occurred in part because of growing demand for communications services as well as falling costs for satellite system equipment. In particular, some domestic systems that were already in operation expressed interest in expanding into global markets. By the mid-1980s, the United States began encouraging the development of commercial satellite communications systems that would compete with INTELSAT. To do so under the INTELSAT treaty agreements, President Reagan determined that competing international satellite systems were required in the national interest of the United States.<sup>11</sup> After that determination, domestic purchasers of international satellite communications services were allowed to use systems other than INTELSAT. In 1988, PanAmSat was the first commercial company to begin launching satellites in an effort to develop a global satellite system. Within a decade after PanAmSat first entered the market, INTELSAT faced other global satellite competitors. Moreover, intermodal competition emerged during the 1980s and 1990s as fiber optic networks were widely deployed on the ground and underwater to provide international communications services.

As competition to INTELSAT grew throughout the 1990s, commercial satellite companies became concerned that INTELSAT enjoyed certain advantages stemming from its intergovernmental status. In particular, the new satellite companies noted that INTELSAT enjoyed immunity from legal liability and was often not taxed in the various countries it served. Additionally, new competitors noted that the signatories to INTELSAT in many countries were typically government-owned telecommunications companies, and many were the regulatory authorities that made decisions on satellite access to their respective domestic markets. As such, new satellite companies were concerned that those entities, because of their ownership stake in INTELSAT as signatories, might favor INTELSAT and thus render entry for other satellite companies more difficult. Because of these concerns, competitors began to argue that the satellite marketplace would not become fully competitive

<sup>7</sup>This provision was limited to those countries that were not members of the World Trade Organization.

<sup>8</sup>Additionally, once INTELSAT was privatized under provisions of the ORBIT Act, Comsat Corporation's role as the U.S. signatory to the INTELSAT operating agreement was ended.

<sup>9</sup>Some other satellite companies provided fixed satellite services between some countries, but INTELSAT was the only provider at that time that could provide service to all parts of the globe.

<sup>10</sup>While INTELSAT was the only provider at that time of what is called global fixed satellite services—that is, services provided between fixed points on land—another global satellite organization that was also formed based on amendments to the Communications Satellite Act provided global maritime satellite communications. This organization is commonly known as Inmarsat.

<sup>11</sup>See Presidential Determination Number 85-2.

unless INTELSAT became a private company that operated like any other company and no longer enjoyed any advantages.

During the same time frame, some of the signatories to INTELSAT came to believe that certain of INTELSAT's obligations as an intergovernmental entity impeded its own market competitiveness. For example, decision-makers within INTELSAT became concerned that the cumbersome nature of the intergovernmental decision-making process left the company unable to rapidly respond to changing market conditions—a disadvantage in comparison with competing private satellite providers. In 1999, INTELSAT announced its decision to become a private corporation, but to leave in place a residual intergovernmental organization that would monitor the privatized Intelsat's remaining public service obligations.<sup>12</sup>

#### FCC BELIEVES INTELSAT'S PRIVATIZATION WAS CONSISTENT WITH THE ORBIT ACT'S REQUIREMENTS

On July 18, 2001, INTELSAT transferred virtually all of its financial assets and liabilities to a private company called Intelsat, Ltd., a holding company incorporated in Bermuda. Intelsat, Ltd. has several subsidiaries, including a U.S.-incorporated indirect subsidiary called Intelsat LLC. Upon their execution of privatization, INTELSAT signatories received shares of Intelsat, Ltd. in proportion to their investment in the intergovernmental INTELSAT.<sup>13</sup> Two months before the privatization, FCC determined that INTELSAT's privatization plan was consistent with the requirements of the ORBIT Act for a variety of reasons, including the following:

- Intelsat, Ltd.'s Shareholders' Agreement provided sufficient evidence that the company would conduct an initial public offering (IPO).
- Intelsat, Ltd. no longer enjoyed the legal privileges or immunities of the intergovernmental INTELSAT.
- Both Intelsat, Ltd. and Intelsat LLC are incorporated in countries that are signatories to the World Trade Organization (WTO) and have laws that secure competition in telecommunications services.
- Intelsat, Ltd. converted into a stock corporation with a fiduciary board of directors.
- Measures were taken to ensure that a majority of the members of Intelsat, Ltd.'s Board of Directors were not directors, employees, officers, managers, or representatives of any signatory or former signatory of the intergovernmental INTELSAT.
- Intelsat, Ltd. and its subsidiaries had only arms-length business relationships with certain other entities that obtained INTELSAT's assets.<sup>14</sup>

In light of these findings, FCC conditionally authorized Intelsat LLC to use its U.S. satellite licenses to provide services within the United States.<sup>15</sup> However, FCC conditioned this authorization on Intelsat, Ltd. conducting an IPO of securities as mandated by the ORBIT Act. In the past year, however, several changes have occurred that alter the circumstances and requirements associated with Intelsat's IPO. On August 16, 2004, Intelsat, Ltd. announced that its Board of Directors approved the sale of the company to a consortium of four private investors. According to an Intelsat official, this transaction, which was completed on January 28, 2005, eliminates former signatories' ownership in Intelsat. Additionally, on October 25, 2004, the President signed legislation modifying the requirements for privatization in the ORBIT Act. Specifically, Intelsat, Ltd. may forgo an IPO under certain conditions, including, among other things, certifying to FCC that it has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in the company.<sup>16</sup> FCC is still reviewing this transaction to determine whether Intelsat has met the requirements of the ORBIT Act as amended and thus is no longer required to hold an IPO.

<sup>12</sup>The residual intergovernmental organization is known as the International Telecommunications Satellite Organization (ITSO).

<sup>13</sup>In addition, some portion of the intergovernmental Intelsat was owned by nonsignatory—or “investing”—entities, which also received pro rata shares in the new Intelsat, Ltd.

<sup>14</sup>These entities include New Skies Satellites N.V., a spin-off company created approximately 1 year before the privatization of Intelsat that received some of INTELSAT's satellites, and the International Telecommunications Satellite Organization, the ongoing intergovernmental organization responsible for monitoring Intelsat, Ltd.'s continuing “lifeline” obligations, which received start-up funding from INTELSAT when it was privatized.

<sup>15</sup>In its required annual reports to the Congress on the ORBIT Act, FCC has continued to report that Intelsat has complied with ORBIT Act provisions.

<sup>16</sup>In the law, significant dilution means that a majority of the financial interests in Intelsat is no longer held or controlled, directly or indirectly, by signatories or former signatories.

WHILE MARKET ACCESS HAS IMPROVED, SOME COMPANIES SAY THAT CERTAIN MARKET ACCESS CHALLENGES REMAIN

According to most stakeholders and experts we spoke with, access to non-U.S. satellite markets has generally improved during the past decade, which they generally attribute to global trade agreements and privatization trends. In particular, global satellite companies appear less likely now than they were in the past to encounter government restraints or business practices that limit their ability to provide service in non-U.S. markets. Satellite companies and experts we spoke with generally indicated that access to non-U.S. satellite markets has improved. Additionally, most stakeholders attributed this improved access to global trade agreements that helped to open telecommunications markets around the world, as well as to the trend toward privatization in the global telecommunications industry. At the same time, many stakeholders noted that the ORBIT Act had little to no impact on improving market access. According to several stakeholders, market access was already improving when the ORBIT Act was passed.

Despite the general view that market access has improved, some satellite companies and experts expressed concerns that market access issues still exist. These remaining market access problems were attributed to foreign government policies that limit or slow satellite competitors' access to certain markets. For example:

- Some companies and experts we spoke with said that some countries have policies that favor domestic satellite providers over other satellite systems and that this can make it difficult for nondomestic companies to provide services in these countries.
- Some companies and one expert we spoke with said that because some countries carefully control and monitor the content that is provided within their borders, the country's policies may limit certain satellite companies' access to their market.
- Several companies and an expert we interviewed said that many countries have time-consuming or costly approval processes for satellite companies.<sup>17</sup>

In addition to these government policies, some stakeholders believe that Intelsat may benefit from legacy business relationships. Since INTELSAT was the dominant provider of global satellite services for approximately 30 years, several stakeholders noted that Intelsat may benefit from the long-term business relationships that were forged over time, as telecommunications companies in many countries may feel comfortable continuing to do business with Intelsat as they have for years. Additionally, two stakeholders noted that because companies have plant and equipment as well as proprietary satellite technology in place to receive satellite services from Intelsat, it might cost a significant amount of money for companies to replace equipment in order to use satellite services from a different provider. Alternatively, representatives of Intelsat, Ltd. told us that Intelsat seeks market access on a transparent and nondiscriminatory basis and that Intelsat has participated with other satellite operators, through various trade organizations, to lobby governments to open their markets. Further, some companies and many of the experts we interviewed told us that, in their view, Intelsat does not have preferential access to non-U.S. satellite markets and that they have no knowledge that Intelsat in any way seeks or accepts exclusive market access arrangements or attempts to block competitors' access to non-U.S. satellite markets.

Finally, some of the companies we spoke with believe that FCC should take a more proactive role in improving access for satellite companies in non-U.S. markets. For example, one satellite company said that section 648 of the ORBIT Act, which prohibits any satellite operator from acquiring or enjoying an exclusive arrangement for service to or from the United States, provides a vehicle for FCC to investigate the status of access for satellite companies to other countries' markets. Conversely, FCC officials told us they do not believe that FCC should undertake investigations of market access concerns without specific evidence of violations of section 648 of the ORBIT Act. While some comments filed with FCC in proceedings on Intelsat's licensing and for FCC's annual report on the ORBIT Act raise concerns about market access, FCC has stated that these filings amount only to general allegations and fall short of alleging any specific statutory violation that would form a basis sufficient to trigger an FCC enforcement action.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

<sup>17</sup> Some stakeholders we spoke with who made this point also noted that the same countries may have bureaucratic and costly processes for any foreign company—not just satellite or telecommunications companies—that wants to do business in their country.

Mr. UPTON. Well, thank you very much, all of you. And at this point, we will proceed with questions from the members, and not take more than 5 minutes each.

As I look at what Congress has done over the last number of years, I agree with you, Ms. Hecker, I think it has been a success. And some might say we have achieved exactly the success, perhaps a little faster than some might have predicted, and historically as this panel has continually looked at the ORBIT Act and the way things have transformed itself for the last number of years, I guess the question today would be focusing on the re-affiliation prohibition, what Mr. Goldberg cited, and the ban, the 11-year ban that prohibits Mr. Goldberg's firm from re-affiliating at all, and that time clock really doesn't start, as I understand it, until the FCC says go. Is that right? Which is going to be relatively soon, I think. Is that right, Mr. Abelson? The first pitch is about ready to be thrown, it is not going to go extra innings?

Mr. ABELSON. Yes, that is correct.

Mr. UPTON. But the game is 11 years long. And the question that I think that Congress will ultimately look at as to whether or not that 11-year time clock is going to change. Is it going to become, as they say at Wrigley Field, a game called because of darkness, though they have lights now?

And what we are going to take a look at, and I guess that is where my focus is, and I just want to know, maybe hear from each of you. Maybe we will start with Ms. Hecker since she was the last one to testify with her statement, and indicated that she didn't comment specifically about this provision, but would be willing to do so. What are the—do you think the marketplace is ready for this? That is the first question. And second, what are the—who would be against it? I am not aware of any, but maybe you have heard of some.

Ms. Hecker.

Ms. HECKER. Well, I—

Mr. UPTON. You have got to hit that mic button.

Ms. HECKER. I would just use logic, because our work has not explicitly done that. But the way I looked at the Act, you had an intent when that provision was in there to prevent the subversion of the planned privatization of INTELSAT, and the emergence of competition. New Skies was a spin-off to try to spur that competition. But the reality is there are multiple firms, and that competition is there and they are all fully privatized. One is not anymore aligned with the former signatories than any of the others. And I think really the role of the antitrust laws and the FCC review, and perhaps even DOD review, because of some of the security issues, are really the mechanisms that perhaps appropriately apply at this stage to examine for the consolidation in this industry.

Mr. UPTON. Mr. Auckenthaler.

Mr. AUCKENTHALER. Thank you, Mr. Chairman. I will not comment on the ban on re-affiliation between INTELSAT and New Skies, but I would like to ask that when you consider changing the law in that respect, you also look at the ban on re-affiliation between Inmarsat and ICO. As you probably know, ICO went through Chapter 11 protection, came out in the year 2000. Now owned by a group of investors led by Craig McCaw. There is not

commonality of ownership at all between ICO and Inmarsat. And I can think of no public policy reason why there should be a 15-year ban on any possible relationship between the two companies. Thank you.

Mr. UPTON. Mr. Spector.

Mr. SPECTOR. Mr. Chairman, if I may use your same metaphor about a baseball game, I think the nature of the game has very much changed from where we were back in 2000. And today, the marketplace is a very different one than the one that Congress envisioned back then. If you have two entirely private firms, each owned entirely by private investors, why should the Congress get in the middle and why should U.S. statutes get in the middle of that private decision about what those firms do. Obviously, there are laws on the books. The Sherman Act and other antitrust laws, the Communications Act and other laws administered by the FCC that would relate directly to any merger in the communications industry and that would be part of looking at any merger. But certainly from a marketplace standpoint, we believe that to be the case.

I would also say on your question of who is against this that we don't know of anyone who is against getting rid of this re-affiliation prohibition, and we don't see how anyone really could be against it, because in the end, it is about competition and as we know in this Congress particularly has been a big supporter of competition. We don't know of anyone who is making the anti-competitive argument that somehow this law should remain on the books.

Mr. UPTON. Mr. Goldberg, would you agree with that conclusion?

Mr. GOLDBERG. Yes, I share the perspective of the other panelists, which is the market is radically different. Again, I said unrecognizable from the time that ORBIT was passed. There are, I believe, adequate safeguards in terms of the antitrust laws, the FCC's public interest standards, and other oversight that is applied whenever there are combinations that implicate national security concerns. And again, our perspective is this: set aside just the privatization issues and how we think remarkable and extraordinary it is that there be a provision that absolutely prohibits two entirely commercial companies from combining, but the market is very, very aggressive today. It is very, very competitive. I think most industry observers anticipate that there will be some consolidation in our sector. And from our perspective, whether New Skies ultimately participates in that, I think it would be artificial to exclude INTELSAT from that equation. That is why we think the time has come for Congress to revisit that provision.

Mr. UPTON. Mr. Abelson, would you wish to comment?

Mr. ABELSON. Sure. The first thing I would say, of course, is that the Commission has not yet considered the matter that you are addressing. But then let me talk about what would happen if you were to change it, and what would the Commission do. In fact, we got a merger application from, for example, New Skies and INTELSAT, we would review the proposed merger pursuant to the relevant sections of the Communications Act, most particularly Section 310. And we normally in such a review undertake a public interest analysis and review the identity—to try to identify both potential public interest harms and benefits. A Commission grant of

the merger would, in fact, have to show that it served the public interest, convenience, and necessity. We would look at a number of things, including the likely competitive effects of the proposed transaction, whether such a transaction raises significant competition issues, and also the likely public interest benefits of it.

Mr. UPTON. My time is expired.

Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. Goldberg, what percentage of international telecommunications traffic is underseas and how much is satellite? Do you know?

Mr. GOLDBERG. I cited in our written testimony a report that the FCC issued. I think it is their 2004 International Circuits report. And I believe at this point in time, again, according to the FCC's report, and I believe that what this looks at is international traffic between the United States and a foreign point. I understand that today—if you give me just 1 second. Satellites, at least in 2003, the FCC hasn't issued the numbers for 2004. Satellites are carrying just 1 percent of international traffic. That is in contrast back to the time when—back in 1997 when there was a lot of activity here when ORBIT was first passed, at least by the House. At that time, 10 percent of international traffic was carried by satellites. And this is another thing that we try to emphasize. Not only has the satellite industry become much, much more competitive because we have all launched collectively so much more capacity, but there is now 40 times more undersea fiber capacity than there was some years ago, and we have lost an enormous market share to the undersea fiber providers.

Mr. MARKEY. Thank you.

Mr. Spector, the previous owners of INTELSAT, which included several signatories, made a decision after the ORBIT Act to domicile the company for legal purposes in Bermuda, while keeping its headquarters here in DC. Are the new owners management reconsidering that decision to have the domicile in Bermuda?

Mr. SPECTOR. Mr. Markey, the short answer to that is no, but I want to point out in that context that INTELSAT was never a U.S. company. This is not an example, as with some companies, of a U.S. company moving offshore. INTELSAT was an intergovernmental organization headquartered in Washington, DC, and then when it became a private company, it began life as a Bermuda company.

That is because INTELSAT's business, frankly, is all over the world. It is not just in the United States. And while we very much value the United States and do a lot of business here, as well as have a significant presence here in Washington, DC, we are an international company.

Mr. MARKEY. Okay. Mr. Abelson, which country, in your estimation, is the worst about discrimination about satellite competition?

Mr. ABELSON. That is a very interesting question. I would have to actually defer to the trade representative that collects these kinds of complaints from U.S. industry. They filed—I believe they put out a report just 2 days ago on telecom trade——

Mr. MARKEY. Did you read the report?

Mr. ABELSON. I did read the report. I don't think they cited any satellite issues in that report.

Mr. MARKEY. Do you have any offhand idea as to which countries are the worst, a grouping of countries?

Mr. ABELSON. I really don't. We have looked at competition globally in the satellite industry, but with regard to the countries that are the worst, I don't have a way of knowing. I really rely on the companies to report to me what they were experiencing.

Mr. MARKEY. But again, they might not want to anger the country.

You are saying you really don't know, Mr. Abelson, which countries in the world discriminate against satellite competition? You really have no idea?

Mr. ABELSON. I have knowledge about the regulatory practices of foreign countries—

Mr. MARKEY. Yeah, so which ones are bad?

Mr. ABELSON. Which countries have bad—

Mr. MARKEY. Yeah, which companies have bad policies in the competition? That is your job, right?

Mr. ABELSON. My job is actually to look at competition here in the United States in the satellite industry.

Mr. MARKEY. Okay.

Mr. ABELSON. And we have been doing a lot of work, as I have noted, to promote competition in this field.

Mr. MARKEY. Yes. But you don't know what goes on in the world?

Mr. ABELSON. I rely upon the trade representative in the Commerce Department that are responsible for getting access overseas on these issues.

Mr. MARKEY. Okay. Just this Monday, Mr. Abelson, the DC circuit heard the case of Northpoint Communications versus the FCC on an issue stemming from the ORBIT Act's prohibition on auctioning licenses for satellite frequencies. Is the FCC seeking any clarification or change to this provision?

Mr. ABELSON. At this point, the Commission has not considered the matter of whether to seek change to this provision. Our position with regard to the ORBIT Act and the court case that you referred to is that the exemption applies only to global or international satellite systems.

Mr. MARKEY. I actually—and I will be honest with you. I wish we had an 11-year or a 15-year prohibition on MA Bell re-affiliating after the Telecom Act. That would have been a good addition to have built into the law. And I do understand that the satellite market has become widely competitive, and therefore, worth revisiting these prohibitions. And I am open-minded about it, Mr. Chairman, about making adjustments, and perhaps on some other issues as well.

Mr. UPTON. Thank you.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Again, it is great to listen and to follow up on the testimony. I am trying to figure out how I can extend my comments to the kids, you know, as I have used this example in the past. And I think the conclusion is we were successful, but as in most pieces of legislation, we have to re-look and we have to retune and we have to

manage that. And that is what this hearing is about. And I think we have already identified some things that just don't quite make sense anymore. And hopefully, we will be able to resolve that.

I know I have been involved on the peripheral with some of the extensions, because as was mentioned before by Mr. Auckenthaler, of a John Deere and their technology. And I was talking to Mr. Terry, who was by me before, and just the amazing things that are capable about the self-directing tractors and the evaluation of soil composition. And for my environmental friends, the ability to specifically identify the needed land piece and the fertilizer or the component in that soil so you don't overspread. And this is all being self-directed without, really, an operator in a tractor. It is just phenomenal. At night, with no lights on. So that is the new era, that is the new world, and competition brings that to bear.

I have also, with the military background, understand, really, the benefits to our men and women in the Armed Services of the access to a competitive satellite system. And I don't think, a lot of times, what we understand, because the Department of Defense is huge and unruly, and really gets beat up a lot of times for inefficiencies and cost over-rise that—I think there are claims being made and I believe in that, because they are using a for-profit satellite system and carrier that there are cost benefits versus the Defense Department's management of that satellite system to begin with.

So I appreciate this, and this is more of an opening statement, but the question I do have, and as a reservist, I do work with the Army War College, and we bring these general wannabe's before and we grill them. I get some of my colleagues to help. And we always try to bring in questions that are not particularly what they are prepared for, just to shake them up and to realize that once you are at a Congressional hearing, anything can be asked.

So I throw this question out, just because of—it is one that I have and you may not be able to answer it, but I have always been concerned on our reliance on technology, both for the world and for the military, because of, you know, threats to disruption. Talk to me about electromagnetic pulses and what would that do to the world economy, or really, a digitized battlefield today which really, the Army is going to. Is there a fear that—I mean, that just kind of send us into the dark ages again? Can anyone speak on that?

Mr. GOLDBERG. I can tell you that the commercial satellite operators right now are engaged in well over a year long effort with the Department of Defense. In fact, there was a follow up meeting just 2 weeks ago over at the Pentagon where we are working with the Department of Defense to increasingly integrate our commercial operations with their military operations on lots of different levels. They are, today, looking at procurement form, how they go about procuring commercial satellite capacity for their requirements. They are looking at sort of safety and protection issues, including both our actual terrestrial facilities, so making sure that our Earth station facilities have proper security, as well as of the satellites themselves. How can the satellites be operated in a more secure way?

We are looking at encrypted TT&C, the telemetry and control of the satellites, so this is actually an area—the Department of De-



fense is increasingly relying on the commercial satellite industry, which we think is a good thing, and it is very much consistent with the Congressional mandate that they received to stop doing everything themselves. As part of that, they are insisting that we work more closely with them to address some of these security concerns.

I can't speak directly to what would be the impact of an electromagnetic sort of pulse or surge, but I can tell you that there is an ongoing conversation right now between the commercial providers and our military customers to make sure that the satellites that they rely on are as robust as possible.

Mr. SHIMKUS. And just for, you know, just to be clear. You know, that is primarily from a nuclear air burst in the atmosphere that would do that, and I think that is a major concern. It has been a concern for the military for a long time, and we are so reliant now on the interconnectivity and the use of satellites for everything: for banking, for—I just throw it out there. And if there is times when your folks can come back and talk to me about that, I would receive it happily and readily.

Thank you, Mr. Chairman. I yield back.

Mr. UPTON. Thank you.

Mr. Inslee.

Mr. INSLEE. Thank you, Mr. Goldberg. I am new on this committee, so some of this discussion may be repetitive.

But I just want to ask you, in your comments that I was reading just about the potential merger that you have discussed, is there anything that critics would argue especial about this space, so to speak, literally and figuratively, that would make this different from other mergers of other privately held or publicly held companies at this point? What arguments would be made, and how would you respond to them?

Mr. GOLDBERG. You know, it is always hard to speculate as to, you know, what someone would come along and say. I do believe that our industry is going to consolidate. I do believe that will be a healthy development for our industry. I do believe that any proposed combinations will get significant scrutiny over at the FCC and at the Justice Department or at the FTC.

New Skies, I have been at New Skies since its inception. In looking back over the years, it was always difficult for me to project that we would be where we are today. Equally projecting forward, it is still hard for me to say where we will be next. New Skies is the smallest global operator, but we are larger than a number of regional operators. As a result, if there is consolidation and we participate in it, we ourselves could try to achieve scale to put us in a better competitive position relative to our bigger competitors. Equally, I think New Skies would, from the perspective of some of the larger operators, be a compelling company to combine with.

I don't believe that any arguments that would be presented in connection with a proposed INTELSAT/New Skies combination would really be meaningfully different from the same arguments that would arise if New Skies were proposing to combine with any of the other larger operators.

And so, I don't believe that there is anything unique about our competitive position and INTELSAT's competitive position that would bring extraordinary arguments to bear. Candidly, I think if

it were proposed that we combine with one of the other two global operators, I think we would be looking at essentially the same set of arguments. To the extent that anybody does come forward and offer any opposition, and I am not persuaded in light of what the industry looks like today, that anybody would come forward and offer those objections.

Mr. INSLEE. So is it fair to say that you—and I welcome any other comments from the panel—basically look at this industry, you would suggest to us that at this point, we really should have no different regimen of protocols in how we handle merger than we do the dog food market or trucking industry or anything else. Is that kind of a fair statement, or is there some gradations there we should think about?

Mr. GOLDBERG. I think that, you know, if the dog food market consolidates, I am not sure what sort of national security implications that has, but the satellite industry will attract heightened scrutiny because of the national security implications that arise because of the services that we provide.

But do I believe that there should be a fundamentally different approach to how proposed combinations in the satellite sector are reviewed relative to the terrestrial wireless sector, the fixed line telecom network? From my perspective, no, I don't believe that there should be any sort of extraordinary review or anything fundamentally different, particularly in light of the fact that satellites are increasingly competing with these other technologies.

Mr. SPECTOR. Mr. Inslee, if I may, I would also add that a difference from the dog food industry or many other industries is that we do have, as was discussed earlier, FCC reviews. So in addition to the typical Justice Department or FTC review of a merger, you are always going to get a second look at a merger by the Federal Communications Commission under a very broad ranging public interest standard.

Mr. INSLEE. Well, thank you very much, and any time you want some help buying some more Boeing products, let me know and I will give you a hand. Thanks a lot.

Mr. SPECTOR. We are buying a satellite from them.

Mr. UPTON. Thank you.

Mr. Shimkus, do you have additional questions?

Mr. SHIMKUS. No, Mr. Chairman.

Mr. UPTON. Mr. Markey?

Mr. MARKEY. You know what, if I may?

Each of you just give us a 1-minute summation of why a merger is a good idea or not a good idea. One minute. Mr. Abelson.

Mr. ABELSON. I can be very quick. I can't give you an idea about whether it would be a good or a bad thing, but if it were presented to us at the FCC, we would very seriously consider it.

Mr. MARKEY. Mr. Goldberg.

Mr. GOLDBERG. I believe the industry today is unhealthy. I believe that the negative consequences of that are that the industry is losing jobs. We are not attracting the best quality of people to come into this sector. I believe that some satellite operators have gone bankrupt over the past few years. I think the industry is unhealthy. I do believe that consolidation will help the industry, and not just our industry, but the downstream providers, the

Boeings who build satellites for us, the Lockheed's. I think that the world is fundamentally different than it was when ORBIT was passed, and I think that it is time to revisit ORBIT.

Mr. MARKEY. Mr. Spector.

Mr. SPECTOR. INTELSAT has certainly not decided whether a merger with New Skies would be a good thing or a bad thing for us. What we do know is that the current flat statutory prohibition on such a merger is a bad thing, and that it artificially inhibits what would otherwise be a natural competitive process of looking at all of the options for both of these companies.

Mr. MARKEY. Mr. Auckenthaler.

Mr. AUCKENTHALER. Thank you, Mr. Markey. I would echo what Mr. Spector said. My company is not actively considering whether to discuss a merger with ICO. I only would say that there is no—in my view, no public policy need for any special constraints on that kind of commercial activity, and that normal reviews that would occur at the FCC and the Justice Department and in the siphious process would be sufficient.

Thank you.

Mr. MARKEY. Thank you.

Ms. Hecker.

Ms. HECKER. The original purpose for the re-affiliation prohibition seems to have been taken over by time. It seems to be no longer relevant. Both firms have been fully divested of any signatory or former signatory ownership, and there is a good case that can be made that any restrictions on constraints on the consolidation of these firms really prevents the market from coming up with the most efficient and market-based result.

Mr. MARKEY. Thank you, Ms. Hecker, very much. We thank all of you.

Mr. Chairman, in my 22 years experience on this subject, because of the excitement attached to it—this is actually the largest crowd we have ever had attend a hearing on this subject. And with Mr. Inslee and Mr. Shimkus here, the largest number of members to ever show up and stay at a hearing on this subject. So we thank each of you for your riveting testimony. We appreciate it.

Mr. UPTON. Yes. We have been notified, not by satellite, but by Blackberry, that we are expecting votes on the House floor momentarily, a series of votes.

I want to join Mr. Markey and others for thanking you for your testimony and the great lengths that you took to get here today and yesterday. Again, we appreciate your testimony. We look forward to continuing to oversee exactly what happened and examine the marketplace, and look forward to hearing from you in the months ahead. I thank you all.

We now adjourn the hearing.

[Whereupon, at 11:23 a.m., the subcommittee was adjourned.]

